Office-Supreme Court, U.S.
FILED
DEC 17 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2125

In the Supreme Court of the United States

OCTOBER TERM, 1982

T. H. BELL, SECRETARY OF EDUCATION,
Petitioner

v.

STATE OF NEW JERSEY

T. H. BELL, SECRETARY OF EDUCATION,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED MAY 17, 1982
CERTIORARI GRANTED OCTOBER 4, 1982

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GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case. No. 80-1991

Date	FILINGS—PROCEEDINGS
1980	
July 7	Petition for review of a decision of the Secretary of Education, received July 7, 1980, filed. (6cc) Service attached.
	Copy of above petition served by mail on Secretary of Education.
July 15	Appearance of John J. Degnan and M. Kathleen Duncan, Esqs., for petitioner, filed.
July 21	Appearance of Philip H. Rosenfelt and Robert J. Arnot, Esqs., for respondent, filed.
Aug. 18	Certified list of the record on review, filed. (1cc—3 add'l cc rec'd 8/29/80)
Sept. 26	Consent motion by petitioner for leave to extend time to file brief and appendix to October 29, 1980, *with* Affidavit of M. Kathleen Duncan, Esq., in support of motion, filed. (4cc) Service attached.
Oct. 1	Submitted on above consent motion. Clerk
Oct. 3	Order (Clerk) granting the above consent motion and stating that no further extensions will be permitted for any reason, filed.
Nov. 3	Consent motion by petitioner for leave to file brief and appendix out of time by November 3, 1980, *with* Affidavit of M. Kathleen Duncan, Esq., in support of motion, filed, (4cc) Service attached.
Nov. 5	Submitted on above consent motion. Clerk.

Date	FILINGS—PROCEEDINGS

1980

Nov. 6 Order (Clerk) granting the above consent motion under the circumstances and directing that petitioner's brief and appendix are filed as of the date of this order, filed.

Nov. 6 Brief for petitioner, rec'd November 3, 1980, filed. (25cc) Certification of bar membership attached.

Nov. 6 Appendix, Vols. I, II, III & IV, rec'd November 3, 1980, filed. (4cc)

Nov. 6 Affidavit of service of petitioner's brief and appendix by mail on 11/3/80, rec'd 11/3/80, filed.

Nov. 21 Consent motion by respondent for leave to extend time to file brief to January 8, 1981, filed. (4 cc) Affidavit of service attached.

Nov. 26 Submitted on above consent motion. Clerk

Dec. 2 Order (*Clerk*) granting the above consent motion and no further extensions will be permitted, filed.

1981

Jan. 7 Brief for respondent, w/service by mail on 1/7/81, filed. (25 cc)

Jan. 29 Consent Motion—O/T pet's R.B. by 2/2/81, w/service, filed.

Feb. 2 Submitted. Clerk.

Feb. 4 Order (*Clerk*) Granting pet's mot. to file R.B. o/t by 2/2/81 and no further XT will be permitted, filed.

Feb. 2 R. brief for petitioner, w/service by mail on 2/2/81, filed. (25 ccs) Cert. of bar membership attached.

May 7 Order (*Adams*, C. J.) directing 15 mins. oral argument time for each side, filed.

May 18 Argued. Coram: Adams, Rosenn & Higginbotham, C.J. (Court directed counsel to have trans. of oral argmt. prepared).

Date	FILINGS—PROCEEDINGS

1981

June 18 Transcript of tape of oral argument in this Ct. on 5/18/81, rec'd at direction of Court.

Oct. 13 Order (Adams, Rosenn & Higginbotham, C.J.) consolidating the petitions for reivew at Nos. 80-1991 & 80-2302 for disp. by the Ct., filed. (Cov. 80-1991 & 2302)

Oct. 13 Opinion of the Court (Adams, *Rosenn* & Higginbotham, C.J.), w/concur by J. Higginbotham, filed. (Cov. 80-1991 & 2302)

Oct. 13 Judgment granting the petition for review; reversing the order of the U.S. Dept. of Education dated 5/7/80, appealed at No. 80-1991, & 7/16/80, appealed at No. 80-2302 and remanding the causes for vacation of the orders requiring repayment by petrs. of previously rec'd Title I funds, w/costs against resp., filed. (Cov. 80-1991 & 80-2302)

Oct. 26 Motion—XT resp's pet. for rehg for 30 days to 11/26/81, w/serv., filed. (Cov. 80-1991 & 2302)

Oct. 27 Bill of costs for petitioner, w/serv., filed.

Oct. 30 Order (Rosenn., C.J.) granting above XT mot. to file pet. for rehg. by 11/26/81, filed. (Cov. 80-1991 & 2302)

Nov. 30 Motion by respondent to file pet. for rehg. which includes a 7 pg. addendum in addition to the 15 pgs. of text, or in the alt., to strike the 7 page addendum from such pet. as filed by resp., w/serv., filed. (Cov. 80-1991 & 2302)

Dec. 7 Order (Rosenn, C.J.) granting resp's mot. for leave to file pet. for rehg. with addendum attached, filed. (Cov. 80-1991 & 2302)

Dec. 7 Petition by respondent for rehg. & suggestion for rehg. en banc, w/addendum, w/serv., filed. (25 cc) (Cov. 80-1991 & 2302)

Dec. 17 Order denying petition for rehg. for the Court en banc, filed. (cov. Nos. 80-1991 & 80-2302)

Date	FILINGS—PROCEEDINGS

1980

Dec. 28 Cert. judgm. issued in lieu of formal mandate. (cov. Nos. 80-1991 & 80-2302)

1982

Jan. 20 Costs taxed in the amount of $359.29 in favor of petr. Commonwealth of PA added to Cert. judgm. pursuant to Rule 39(d), F.R.A.P.

Dec. 28 Certified list returned to the Secretary.

Mar. 10 Copy of letter dated 3/8/82, to Sol. General of the U.S., adv. the S.C. XT for filing cert. to 4/16/82, rec'd from C of the S.C. (Cov. 80-1991 & 80-2302)

Apr. 8 Copy of letter dtd. 4/8/82, to Sol. General of the U.S., adv. the S.C. has XT for filing cert. to 5/16/82, rec'd from C of the S.C. (Cov. 80-1991 & 80-2302)

May 21 Notice—Cert. filed 5/17/82, filed. (S.C. No. 81-2125) (Cov. 80-1991 & 2302)

Oct. 7 Order—Cert. granted 10/4/82, filed. (S.C. No. 81-2125) (Cov. 80-1991 & 80-2302)

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 80-2302

Date	FILINGS—PROCEEDINGS

1980

Sept. 16 Petition for review of a decision of the Education Appeal Board of the United States Department of Education, received September 16, 1980, filed (6cc.) Service attached.

Copy of above petition served by mail on respondent.

Sept. 29 Appearance of Margaret Hunting, Esq., for petitioner, filed.

Oct 3 Appearance of Emogene L. Trexedl, Esq., for petitioner, filed.

Oct. 14 Appearance of Robert J. Arnot and Stephen H. Freid, Esqs., for respondent, filed.

Oct. 27 Certified List of Record on Review, filed. Service attached.

Nov. 26 Consent motion by petitioner for leave to extend time to file brief and appendix to January 7, 1981, filed. (4cc) Service attached.

Dec. 3 Submitted on above consent motion. Clerk.

Dec. 17 Order (Clerk) granting the above consent motion and stating that no further extensions of time will be permitted, filed.

1981

Jan. 7 Appendix, rec'd January 12, 1981, filed. (10cc)

Jan. 7 Brief for petitioner, rec'd January 22, 1981, filed. (25cc) Service by mail on 1/7/81 attached. Certification of bar membership attached.

Jan. 7 Addendum to brief for petitioner, rec'd January 12, 1981, filed. (25cc)

Date	FILINGS—PROCEEDINGS

1981

Jan. 26 Consent motion—XT respondent's B. to 3/11/81, w/serv., filed.

Jan. 30 Submitted. Clerk.

Feb. 2 Order (*Clerk*) granting above CM & no further extensions of time will be permitted, filed.

Mar. 11 Brief for respondent & addendum, w/serv. by mail on 3/11/81, filed. (25 cc)

Mar. 25 Consent Motion by petitioner to XT to file reply brief to 4/6/81, w/serv., filed.

Mar. 27 Submitted on above mot. Clerk.

Mar. 31 Order (Clerk) granting above mot., filed.

Apr. 6 Reply brief for petitioner, filed. (25 cc) w/serv. by mail on 4/6/81 & cert. of bar mbrshp attached.

Apr. 9 Actual Document No. 67 (1 copy in 4 vols—pgs. 1-634—Transcript) from record list received, w/service, filed. [Rec'd from U.S. Dept. of Educ. in D.C.] Filed with record list.)

Apr. 17 Motion by respondent for an order striking from the record the affidavit of Mr. William Dallam attached to petitioner's reply brief, *or*, in the alternative, if mot. is denied, resp. be allowed to file affidavits from former U.S. Secretary of Education Shirley Hufstedler, and a present official of the U.S. Dept. of Education, etc., w/ Memorandum in support, w/serv., filed.

Apr. 20 Submitted on above Mot. Coram: Adams, Rosenn & Higginbotham, C.J.

Apr. 27 Motion—O/T petitioner's response in opposition to mot. to strike affidavit, etc., by 4/27/81, w/serv., filed.

Apr. 27 Response by petitioner in opposition to mot. by respondent to strike affidavit, w/serv., received. . . . . .

Apr. 29 Submitted on petitioner's mot. to file response O/T. Coram: Adams, Rosenn & Higginbotham

Date	FILINGS—PROCEEDINGS
1981	Filed
May 15	Letter dated 5/12/81, from Margaret Hunting, Esq., counsel for pet., rec'd for info. of Court.
May 7	Order (Adams, C.J.) directing 20 mins. oral argmt. time for each side, filed.
May 18	Argued. Coram: Adams, Rosenn & Higginbotham, C.J. (Court directed counsel to have transcript of tape of oral argument prepared)
June 18	Transcript of tape of oral argument in this Ct. on 5/18/81, rec'd at direct. of Ct.
July 6	Corrections to transcript of tape of oral argument, received.....
Oct 13	Order (Adams, *Rosenn* & Higginbotham, C.J.) consol. petition for review at Nos. 80-1991 & 80-2302 for disp. by the Court, filed. (Cov. 80-1991 & 80-2302)
Oct. 13	Opinion of the Court (Adams, *Rosenn* & Higginbotham, C.J.), w/concur by J. Higginbotham filed. (Cov. 80-1991 & 2302)
Oct. 13	Judgment granting the petitions for review; reversing the order of the U.S. Dept. of Educ. dated 5/7/80, appealed at No. 80-1991, and 7/16/80, appealed at No. 80-2302 and remanding the caused for vacation of the orders requiring repayment by petrs. of previously rec'd Title I funds, w/costs against resp., filed. (Cov. 80-1991 & 80-2302)
Oct. 13	Order (Adams, *Rosenn* & Higginbotham, C.J.) granting resp's mot. to strike the affidavit of William Dallam, etc., filed.
Oct. 13	Order (Adams, *Rosenn* & Higginbotham, C.J.) denying pet's mot. to file response O/T to mot. by resp. for order striking affidavit of Mr. William Dallam, etc., filed.
Oct. 26	Motion—XT resp's pet. for rehg. for 30 days to 11/26/81, w/serv., filed. (Cov. 80-1991 & 2302)
Oct. 26	Bill of costs for petitioner, w/serv., filed.

Date	FILINGS—PROCEEDINGS
1981	Filed
Oct. 30	Order (Rosenn, C.J.) granting above XT mot. to file pet. for rehg. by 11/26/81, filed. (Cov. 80-1991 & 2302)
Nov. 30	Motion by respondent for leave to file pet. for rehg. which incls. a 7 pg. addendum in addition to the 15 pgs. of tex, or in the alt., to strike the 7 page addendum from such pet. as filed by resp., w/serv., filed. (Cov. 80-1991 & 2302)
Dec. 7	Order (Rosenn, C.J.) granting resp's mot. for leave to file pet. for rehg. with addendum attached, filed. (Cov. 80-1991 & 2302)
Dec. 7	Petition by respondent for rehg. & sugg. for rehg. en banc, w/addendum, w/serv., filed. (25 cc) (Cov. 80-1991 and 2302)
Dec. 17	Order denying petition for rehg. for the Court en banc, filed. (Cov. Nos. 80-1991 & 80-2302)
Dec. 28	Cert. judgm issued in lieu of formal mandate. (covered Nos. 80-1991 & 80-2302)
Dec. 28	Certified list and Actual Document No. 67 frm. rec. list ret. to Sec.
1982	
Jan. 20	Costs taxed in the amount of $359.29 in favor of petitioner Commonwealth of PA added to Cert. judgm. pursuant to Rule 39(d), F.R.A.P.
Mar. 10	Copy of letter dated 3/8/82, to Sol. General of the U.S., adv. the S.C. has XT for filing cert. to 4/16/82, rec'd from C of the S.C. (Cov. 80-1991 & 2302)
Apr. 8	Copy of letter dtd. 4/8/82, to So. General of the U.S., adv. the S.C. has XT for filing cert. to 5/16/82, rec'd from C of the S.C. (Cov. 80-1991 & 2302)
May 21	Notice—Cert. filed 5/17/82, filed. (S.C. No. 81-2125) (Cov. 80-1991 & 2302)
Oct. 7	Order—Cert. granted 10/4/82, filed. (S.C. No. 81-2125) (Cov. 80-1991 & 80-2302)

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
REGION II

26 Federal Plaza
New York, New York 10007

Audit Agency

June 20, 1975

Audit Control No. 50006-02

Dr. Fred G. Burke
Commissioner
New Jersey State Education Department
225 West State Street
Trenton, New Jersey 08625

Dear Dr. Burke:

Enclosed for your information and use is a copy of an HEW Audit Agency report titled, "Audit of Title I of the Elementary and Secondary Education Act of 1965 Administered by the State of New Jersey, Relating to Selection of Target Areas in Newark, New Jersey, for the period September 1, 1970, to August 31, 1973." Your attention is invited to the audit findings and recommendations contained in the report.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HEW Audit Agency reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public.

To facilitate identification, please refer to the above audit control number in all correspondence relating to this report.

Sincerely yours,

/s/ Bernard Luger
Regional Audit Director
HEW Audit Agency

Enclosure

Direct Reply To:

Deputy Commissioner
Bureau of School Systems
Office of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Audit Control No. 50006-02

REPORT OF AUDIT
TITLE I OF THE
ELEMENTARY AND SECONDARY EDUCATION
ACT OF 1965
Administered by the
STATE OF NEW JERSEY

Relating to Selection of Target Areas
in Newark, New Jersey

For the Period
September 1, 1970, to August 31, 1973

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REPORT OF AUDIT
TITLE I OF THE
ELEMENTARY AND SECONDARY EDUCATION
ACT OF 1965
Administered by the
STATE OF NEW JERSEY

Relating to Selection of Target Areas
in Newark, New Jersey

For the Period
September 1, 1970, to August 31, 1973

INTRODUCTION

Background

Title I of the Elementary and Secondary Education Act of 1965 (Public Law 89-10), as amended, authorizes Federal support to local educational agencies for special educational programs for educationally deprived children in attendance areas where low-income families are concentrated. Federal funds are allotted to State educational agencies who, in turn, sub-allot the funds to eligible local educational agencies.

To participate in the Title I program, school attendance areas must meet specific eligibility criteria which are stated in Title 45, Part 116, of the Code of Federal Regulations (CFR). These regulations which implement the Act stipulate that to be eligible an attendance area must have a high concentration of children from low-income families, expressed either in percentages or numbers, equal to or greater than the district average.

Our previous audit report on the State's administration of the Title I program, Audit Control Number 90067[illegible]2, issued March 31, 1969, covered the period September 23, 1965 to August 31, 1967. In recognition of the amendments to the Act, specifically Section 106, Statute of Limitations, in Public Law 93-380 (enacted August 21, 1974)

and our interest in administrative controls in recent years, we have confined our audit coverage in this report to the period September 1, 1970 to August 31, 1973.

During this period, ESEA Title I funds allotted to the New Jersey State Department of Education (SDE) aggregated $156,166,574. The funds sub-allotted to the Newark Board of Education during this period totalled $28,709,198, about 18.4 percent of the allotments to the State. For school year 1973-74, program funds amounting to $61.5 million were allotted to the State of which the Newark Board of Education received $11.2 million.

During the 1972-73 school year, Title I funds were used by the City to support reading, mathematics, and bilingual programs in which 25,996 children participated. The number of participants represented approximately 32 percent of the total pupil enrollment of about 80,000 children as of September 30, 1972 in levels ranging from kindergarten through grade 12.

Scope of Audit

Our audit was made in accordance with standards for governmental auditing. The principal objective was to determine the propriety and efficacy of the methods used by the Newark Board of Education, and approved by SDE, to select eligible school attendance areas. In this review, we examined project applications submitted for approval by Newark to SDE and any related documentary support for the school years 1970-71 through 1972-73.

HIGHLIGHTS OF AUDIT RESULTS

Our audit showed that the Newark Board of Education (BOE) used Title I funds totalling over $1.1 million in school years 1970-71 and 1971-72 in schools which did not meet the eligibility requirements of the Title I regulations. Essential source data in support of the 1970-71 eligibility determinations was not available. However, at least one school, based on the low-income percentages

shown on the application, was improperly classified as eligible to receive Title I funds. In 1971-72, by using incorrect ratios (resulting in part from incomplete low-income statistics) BOE misclassified 13 schools as eligible to receive Title I services.

More critical analysis by the State agency and BOE of the Title I applications for these years would have disclosed the need to validate the eligibility determinations and would have prevented the improper use of program funds. Although various conditions noted in these years did not recur and the City's eligibility determinations for school year 1972-73 were properly made, there was no documentary evidence from which we could determine whether these improvements stemmed directly from critical reviews by the State agency. (See Other Matters section of report, page 25.)

FINDINGS AND RECOMMENDATIONS

Selection of Target Areas

The Newark Board of Education (BOE) used Title I funds totalling over $1.1 million in school years 1970-71 and 1971-72 in schools which did not meet the eligibility requirements of the Title I regulations.[1] A critical review of the project applications for these years by BOE and State agency officials would have disclosed information gaps and a lack of detail on the methods used to determine eligibility of school attendance areas. Essential source data in support of the 1970-71 eligibility determinations was not available. However, at least one school, based on the low-income percentage shown in the application, was improperly classified as eligible for Title I support. In 1971-72, by using incorrect ratios (stemming in part from incomplete low-income statistics) BOE misclassified 13 schools as eligible to receive Title I serv-

[1] Title 45, Part 116, of the Code of Federal Regulations (CFR).

ices. In both years the ineligible schools were designated as project areas and used Title I funds. Eligibility determinations were properly made by BOE in school year 1972-73.

Provisions of Section 116.17, as amended November 28, 1968, set forth specific criteria as standards to determine the eligibility of school attendance areas to receive grant funds under the Title I program. Correct application of these criteria is the first step in the process to upgrade the education of educationally deprived children. The attendance areas which meet the eligibility requirements may or may not be included in Title I projects (and project areas) dependent on the number of educationally deprived children residing in these areas and their educational needs.

In citing the tenets to be observed in this process, the regulations mandated that Title I projects be established in attendance areas which have high concentrations of children from low-income families. Further elaborating on this basic requirement for attendance area eligibility, Section 116.17(d) stipulated that a school attendance area may be designated a project area ". . . if the estimated percentage of children from low-income families residing in that attendance area is as high as the percentage of such children residing in the whole of the school district. . . ." This section also cited an alternative but analogous provision under which the designation may be made ". . . if the estimated number of children from low-income families residing in that attendance area is as large as the average number of such children residing in the several school attendance areas in the school district." The regulations permitted an entire school district to be designated as a project area but only if there were slight differences in concentration of children from low-income families. Basically, these criteria have remained unchanged in successive revisions to the regulations.

In a separate directive (ESEA Title I Program Guide No. 44) to Chief State School Officers issued March 18, 1968, the Office of Education again placed special stress on the regulatory criteria for determining the eligibility of school attendance areas to participate in Title I projects. Section 1.1 of this directive defined an attendance area for the purposes of Title I as an area served by a public school and further stipulated: "For each such attendance area data must be secured on (a) the total number of children who according to their ages are eligible to attend the public school serving that area and (b) the number of such children who are from low-income families." Section 1.1 further defined the criterion for eligibility as follows: "In all cases the number of children considered eligible to attend a particular school consists of all children of the appropriate ages including children attending private schools and children who have dropped out of school."

The program guide suggested various income data sources as guidelines for arriving at attendance area eligibility determinations. It placed primary importance on two sources to ascertain the actual or estimated number of children from low-income families—the number of children in families receiving Aid to Families with Dependent Children or the children receiving free lunches. Housing, health, or employment statistics were also to be considered. The attendance areas were then to be ranked according to the percentage of children from low-income families or to the average number of such children unless there were no wide variations in the population sizes in the various attendance units. The directive also underscored a basic injunction: "Whatever data are used must be used uniformly throughout an applicant's district." In its Title I application for school year 1970-71, the City stated that it had considered eight sources of data, identified as criteria, in its determination of attendance area eligibility. Among these criteria, as enumerated in

paragraph 1.2 of Section II A of the application were the following:

"1.2.1 Statistics on Aid for Dependent Children supplied by the Essex County Welfare Board.

1.2.2 Free lunch and free breakfast programs

1.2.3 Model Cities statistics

1.2.4 Housing statistics"

However, the City did not retain this source data nor have available for our review an analysis of these statistics and information showing the weight given to each criterion in arriving at the determinations of attendance area eligibility. In the absence of this essential substantiation, we could not confirm the reliability of the district-wide percentage of low-income children, stated in the application as 25.5 percent, nor validate the low-income percentage computed for each attendance area. Therefore, we could not determine whether all 74 schools listed in the Title I application, involving 22,848 program participants, were actually eligible for Title I funds. But among the schools included in the application was one (Lafayette Street School) which showed a low-income percentage of 23.5, two full points below the district-wide average of 25.5. Since this school did not meet the prescribed low-income eligibility criteria, its eligibility designation was patently erroneous and its use of Title I funds was improper. For school year 1970-71 Title I funds used by this school totalled $91,266. Our further examination of Title I expenditures for school year 1970-71 showed that 10 additional schools, excluded from the application and therefore ineligible to receive Title I services, had used program funds Totalling $41,021.[1] This condition was not found in other years

[1] These schools included the following: West Kinney Street Junior High, Alexander Street, Ann Street, Chancellor Avenue, Cleveland, Garfield, Mount Vernon, Arts High School, Springfield Avenue, and Maple Avenue.

covered by our review. Responsible BOE officials agreed that these expenditures were improper but could not explain how they had avoided detection.

In determining the eligibility of attendance areas for school year 1971-72 BOE stated in the Title I application that it had considered eight sources of data (similar to those used in the prior year), but had settled on using one source, the statistics on Aid for Dependent Children (ADC) supplied by the Essex County Welfare Board. By using this source, BOE arrived at a district-wide low-income ratio of 33.9 percent. In comparison to the 74 selected attendance areas and 22,848 program participants in school year 1970-71, the application for 1971-72 indicated that the number of selected attendance areas and participating children had increased to 76 and 23,864, respectively.

We found that the method used by BOE to determine the eligibility of attendance areas for school year 1971-72 deviated from the specific instructions stated in Section 1.1 of Program Guide No. 44. As indicated earlier in this report, the determination of attendance area eligibility is dependent on the relationship between (a) the total number of children eligible to attend the public school serving the attendance area, including those attending private schools and those who had dropped out of school and (b) the number of such children from low-income families. This can be expressed in a ratio, as follows:

Ratio A

$$\frac{\text{Total Number of Children from Low-Income Families in School Attendance Area (Col. 3)}^{1}}{\text{Total Number of Children Considered Eligible to Attend a Particular School (Col. 2)}^{1}} = \text{Percentage of Children from Low-Income Families (Col. 4)}^{1}$$

[1] The columnar references correspond to the application format for school year 1971-72 established by the Office of Education.

BOE used this ratio to compute the district-wide low-income relationship of 33.9 percent (32,352 ADC children divided by the total school age children population of 95,780). However, in computing the individual attendance area low-income percentages BOE applied other ratios which did not show a direct correlation between the entire eligible school population in the school attendance area and that segment of the population representing children from low-income families. Contributing to this disparity was incomplete information in the ADC statistics on the number of low-income children in the individual school attendance areas.

The ADC statistics furnished by the Essex County Welfare Board listed the total number of children in the ADC category enrolled at each regular public elementary and secondary school. However, the statistics were incomplete since they excluded those children on ADC rolls attending private and special education schools [1] or who had dropped out of school. The limitations of the statistics therefore suggested to the IEA the use of an alternative ratio permitted in Program Guide No. 44 under certain conditions.

The program guide recognized that in some instances (as did not exist in Newark) schools may not have ". . . well-defined attendance area boundaries or receive numbers of children from outside the areas that have been designed for those schools. . . ." In these cases, it may be necessary to use a different ratio, to base the ranking of the attendance areas for such schools on the ". . . . percentage or number of children from low-income families actually enrolled in those schools. . . ." This ratio under these circumstances is stated as shown below:

---

[1] Established for children with special handicaps, e.g. emotionally disturbed, mentally retarded but educable, deaf, etc.

Ratio B

$$\frac{\text{Total Number of Children from Low-Income Families Enrolled in a Specified School}}{\text{Total Enrollment in Specific School}} = \text{Percentage of Children from Low-Income Families}$$

As previously indicated, Ratio B was not applicable to Newark since the City had well-defined attendance areas. BOE nevertheless attempted to use it because the incompleteness of the ADC statistics left no other reasonable approach. While the ratio was not permitted to be used by BOE under Program Guide No. 44 criteria, it was a reasonable alternative under the circumstances. However, in its attempt BOE devised hybrid ratios which deviated from the method specified in the program guide. The results were unacceptable since there was no direct relationships between the component elements.

For each public elementary school, BOE included in the numerator [1] the number of ADC children enrolled in that school as well as the total number of ADC children residing in the school attendance area who were enrolled in junior and senior high schools. However, BOE limited the data in the denominator [2] to the total enrollment of the elementary school. There was therefore no meaningful relationship between the data shown in the ratio, namely the total ADC statistics for the attendance area and the elementary school enrollment. Lacking this correlation, the ratio had basic mathematical flaws which tended to inflate the low-income percentage for individual elementary school areas and thus to increase improperly the number of eligible attendance areas. The distortion is illustrated in the calculation of the low-income percentage for Madison Street School:

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[1] Column 3 in application format for school year 1971-72 captioned: All Schools in the District Ranked by Percentage of Children from Low-Income Families.

[2] Column 2 in application format described in note [1].

No. of ADC children enrolled in Madison Street School in statistics furnished by the Essex County Welfare Board	445 (A)
No. of ADC children residing in Madison Street School attendance area enrolled in junior and senior high schools	380 (B)
No. of ADC children residing in Madison Street School attendance area enrolled in other schools, e.g. schools for the handicapped	112 (C)
Total No. of low-income children shown in application	937 (D)
Total pupil enrollment in Madison Street School	1544 (E)

Calculation of low-income percentage:

$$\frac{\text{No. of low-income children shown in application (937)}}{\text{Total pupil enrollment in Madison Street School (1544)}} = 60.6\%$$

The limitations of the available data prevented us from recalculating the low-income percentages for individual elementary school areas in accordance with the criteria mandated by OE. Therefore, in our recalculations we followed the reasonable alternative offered in Ratio B. As shown below, we considered only related data, as stated in Ratio B, namely the number of ADC children enrolled in Madison Street School (Item A) and the total pupil enrollment at the school (Item E). This recalculation (445÷1544) showed that the actual low-income ratio for Madison Street School was 28.8 percent, substantially below the district-wide average of 33.9 In recalculating the ratios of the 41 elementary schools presented as eligible in the Title I application we found that 10 schools had low-income ratios lower than the district-wide average and were thus ineligible for Title I funding. Data pertaining to these 10 schools is shown in the following tabulation.

Computation of Low-income Percentages for 10 Elementary Schools (Chart A)

School	Total Number of Low-income Children: Shown in Application	Total Number of Low-income Children: Enrolled at School	Total Number of Children Enrolled at School	Low-income Percentages: Shown in Application Col B ÷ Col D	Low-income Percentages: Computed Auditor Col C ÷ Col E
(Col A)	(Col B)	(Col C)	(Col D)	(Col E)	(Col F)
Madison	937	445	1544	60.6	28.8
Newton St.	446	256	812	54.9	31.5
So. 17th St.	823	519	1549	53.1	33.5
Central Ave.	314	174	592	53.0	29.4
Burnet St.	388	231	766	50.6	30.2
Waverly Ave.	299	191	599	49.9	31.9
Franklin	519	361	1115	46.5	32.4
M. Garvey	603	298	1304	46.2	22.9
Garfield	427	253	1229	34.7	20.6
Hawkins	414	361	1192	34.7	30.3

BOE used a different method to compute the low-income percentages for junior and senior high schools. In this second method to determine the eligibility of secondary schools, BOE added the low-income percentages of the pipeline or feeder elementary schools shown in the Title I application and arrived at an average, as illustrated below for Weequahic High School:

Feeder Elementary School	Low-income Percentage Shown in Application [1]
Bragaw Avenue School	48.4%
Chancellor Avenue School	20.5 [2]
Hawthorne Avenue School	44.0
Maple Avenue School	25.7 [2]
Peshine Avenue School	49.1
Total of low-income percentages	187.7%
Average low-income percentage 187.7% ÷ 5 =	37.5%

[1] Based on our use of Ratio B, the individual feeder elementary school percentages were recomputed respectively as 39.8%, 11.9%, 17.2%, and 40.5%.

[2] These schools had low-income percentages below the district-wide average of 33.9% and were therefore ineligible for I funding

Since the low-income percentages for these individual elementary schools were inflated as described earlier in this report, the resultant averages based on these percentages were similarly inflated.

The method was improper not only because it produced low-income percentage distortions but also because it was not authorized by the attendance area eligibility criteria discussed earlier in this report. Further, it was inconsistent with the method used to determine the eligibility of elementary schools. The use of dual approaches (population totals for elementary schools and averaged percentages for secondary schools) is specifically prohibited by the injunction in Program Guide No. 44 that data in attendance area eligibility determinations ". . . be used uniformly throughout an applicant's district."

In our recomputations of the low-income percentage for the 10 junior and senior high schools shown as eligible in the Title I application we used the same related information (Ratio B) that we had employed in our elementary school calculations i.e., the number of ADC children at each school and the total school enrollment. We found, as shown in the following tabulation, that three of these schools had low-income percentages below the district-wide average of 33.9 percent and therefore were not eligible to use Title I funds.

Computation of low-income Percentages for 3 Secondary Schools (Chart B)

School	Total Number of low-income Children Enrolled at School	Total Number of Children Enrolled at School	Low-income Percentage	
			Shown in Application	Computed by Auditor Col B ÷ Col C
(Col A)	(Col B)	(Col C)	(Col D)	Col E)
Clinton Pl. Jr. H.S.	491	1529	69.5	32.1
Weequahic H.S.	690	2470	37.5	27.9
East Side H.S.	264	2023	35.0	13.0

Since the schools listed in charts A and B did not meet the eligibility requirements of the Title I criteria, they were not authorized to receive grant funds under the Title I program. Title I expenditures made by these schools for school year 1971-72, totalling $1,029,630, were unallowable. The expenditures applicable to each school, rounded off to the nearest dollar, are summarized in the following chart.

Expenditures by Ineligible Schools for School Year 1971-72 (Chart C)

School	Expenditures		
	Salaries	Other Expenses	Total
Madison	$ 92,225	$ 11,525	$ 103,750
Newton Street	63,419	6,044	69,463
So. 17th Street	91,154	13,688	104,842
Central Avenue	56,225	5,307	61,532
Burnet Street	50,128	5,879	56,007
Waverly Avenue	51,651	5,014	56,665
Franklin	107,522	7,705	115,227
Marcus Garvey	102,438	17,049	119,487
Garfield	70,104	11,872	81,976
Hawkins	89,057	13,746	102,803
Clinton Pl. Jr. High	45,407	12,807	58,214
Weequahic High	40,402	12,882	53,284
East Side High	33,498	12,882	46,380
Total Unallowable Expenditures	$893,230	$136,400	$1,029,630

To recapitulate, the city's claims for school years 1970-71 and 1971-72 included unallowable expenditures of at least $1,161,917, as summarized below:

School Year 1970-71		
Expenditures by ineligible school (Lafayette) shown as eligible in application	$91,266	
Expenditures by 10 ineligible schools excluded from application	41,021	
Total unallowable expenditures		$ 132,287
School Year 1971-72		
Total unallowable expenditures-Chart C		1,029,630
Total unallowable expenditures 1970-71 and 1971-72		$1,161,917

During the audit we alerted the City to the impropriety of the ratios used to determine attendance area eligibility and sought an explanation for their usage. BOE's Central Office Coordinator for the Title I program agreed that the ratios used were incorrect and tended to inflate the low-income percentages. He ascribed the incorrect method to the lack of mathematical expertise of the individual responsible for preparing that part of the application. Further, he believed that this employee misconceived the criteria stated in Program Guide No. 44.

We found that the low-income percentages computed for school year 1972-73 were proper and were based on more precise information. The Essex County Welfare Board had furnished BOE with a list showing the name and address of each child, age 5-17, in the ADC category. BOE converted this data into attendance area statistics. Thus, BOE had available for the first time statistics indicating the total number of children from low-income families residing in the school attendance area, inclusive of drop-outs and attendees at public, non-public and special education schools.

There was no documentary evidence from which we could determine whether this improvement in the quality of the City's low-income information and the non-recurrence in succeeding years of various conditions in 1970-71 and 1971-72, discussed earlier in this report, resulted from critical reviews by the State educational agency (New Jersey State Department of Education—SDE). A thorough review of the 1970-71 application by SDE would have disclosed the ineligibility of Lafayette Street School to receive Title I program funds. Further, the City's use of eight sources of information in 1970-71 to determine the number of children from low-income families should have prompted SDE to request a written analysis showing how these various data sources had been used in arriving at the district-wide and individual attendance area low-income percentages.

Similarly, close review of the following year's application (1971-72) by SDE would have detected major gaps in the information relating to the selection of project area schools and triggered a request to the City to resolve the questions raised by SDE prior to application approval. For example, the application includes a brief description of the method used to determine the eligibility of secondary schools but offers no similar commentary on elementary schools. The omission is significant since the calculation for secondary schools involved averaging the low-income percentages of feeder elementary schools, as previously discussed in this report. If SDE had requested a description and an illustration of the method used in arriving at the elementary school percentages, SDE would have detected the basic flaws in the method and would have averted the improper use of over $1 million of Title I funds for the 13 elementary and secondary schools, as shown in Charts A, B and C. Further, if the methodology supporting the secondary school computations had been requested by SDE, the State would have learned, as previously illustrated by us, that the computations included ineligible as well as eligible elementary schools.

Another significant information gap pertained to the rationale for selection of the low-income information source used by BOE in arriving at its eligibility determinations. BOE stated in the application that it had considered eight sources of information before selecting the ADC statistics supplied by the Essex County Welfare Board. Among these low-income data sources were separate statistics relating to housing, Model Cities, free lunch and free breakfast, health, etc. The number of children from low-income families determined by these statistics was shown for only three sources: housing (33,011); free lunch and free breakfast (32,865); and ADC (32,352). Except for stating that these various sources had been considered, BOE did not set forth the criteria it had used in its consideration nor the rationale

for selection of the ADC data. SDE should have requested this information to make certain that the most appropriate data had been used. System weaknesses disclosed in these replies would have suggested to SDE the need for a special on-site audit to confirm the accuracy of reported data and to recommend system improvements.

Recommendations

We recommend that:

1. Arrangements be made to return to the Office of Education those Federal funds, totalling $1,161,917, which were used by ineligible school attendance areas in school years 1970-71 and 1971-72.

2. Steps be taken to develop and implement controls to prevent improper uses of ESEA Title I funds in the future. These controls should prescribe a comprehensive review by responsible officials of the data sources and methods used to determine attendance area eligibility. Where significant discrepancies or patterns of system weaknesses are disclosed in these reviews, special on site examinations should be made to confirm the accuracy of the data and the propriety of the methods.

The State Agency Comments

The State agency's reply to this finding indicated nonconcurrence in our conclusions and recommendations. In support of its narrative comments, the State agency (State Department of Education—SDE) submitted various exhibits which we have marked for ease of reference as Exhibits A to E. We are setting forth verbatim, as follows, SDE's comments on each audit exception category. SDE's complete reply inclusive of the related exhibits is incorporated in this report (page 26) under Appendix A.

"Lafayette Street School

The Draft Audit Report states that Lafayette Street School was ineligible for Title I funds for the school year 1970-71 because its concentration of children from low income families (23.5%) was below the districtwide average (25.5%). Upon re-examination, we find that the low income percentage for Lafayette School was incorrectly stated in the 1970-71 application. The percent should have been stated as 41.4%. Enclosed in support is data from the 1970 census report.

"Expenditures for Non-Title I Schools

Our review of the Newark expenditures for 1970-71 does not indicate that Title I funds were allocated to non-Title I schools. I have enclosed for your examination a section of the fiscal year 1971 audit report for Newark. As you will note, the report indicates (item 2) that allocations were made only against approved projects. I have also included for your review the Title I Budget Distribution for 1970-71 which indicates that funds were not scheduled for any of the schools in question.

"Non-Eligibility of 10 schools listed in the 1971-72 Title I Application.

Your report indicated that auditors recalculated the eligibility of ten schools and found them to be below districtwide low income average. It is clear from the information included that only AFDC data was used in the recalculation. The Newark application specifically indicated that a number of data sources, in addition to AFDC, were used. They were Housing Statistics, Model Cities Statistics, Free Lunch and Breakfast Statistics, Incidents of Foreign Born and Non-English Speaking Students, Health Statistics, Unemployment and Underemployed Sta-

tistics. Page 4b of that application is included for your review.

We concur that there were 445 children identified as AFDC in the Madison Attendance area. These were but a portion of the total low income population which is more accurately reflected by the average daily free lunch attendance (919) for the Madison School. I have included free lunch data for the Madison School.

The situation referred to above applies to the cited secondary schools, also. Although Clinton Place Junior High School identified only 491 students from AFDC data, these children were a part of a total of 1,032 low income children residing in the attendance area. I have again attached free lunch data. It is our contention that if auditors had considered data other than AFDC, they would have determined that each of the 10 schools cited was eligible as listed.

Department Staff has undertaken to provide accurate responses to what we consider serious allegations. In each case, schools of the district in question have been visited. It is our conclusion that poverty during the period in question was so widespread that there were a few schools truly ineligible. The district did attempt to follow regulations in the development and provision of services. In the process they may not have been as definitive as some of us would require. Nevertheless, I am assured that their actions were consistent with the applicable laws and regulations."

Our comments on the SDE position, keyed to the above headings, are presented below:

Lafayette Street School

SDE's comments indicate that careful examination of all data sources used in the determination of attendance area eligibility would have disclosed that the low-income percentage for Lafayette Street School was incorrectly stated. In support of this statement SDE submitted ". . . data from the 1970 census report . . . ." The SDE position is not valid since the 1970 census data report was not one of the eight sources identified in the application as those used to determine attendance area eligibility.

In its Title I application for school year 1970-71, BOE stated that it had determined attendance area eligibility ". . . on the basis of the best available information . . . ." BOE had pointed out in a special note in the application that the 1970 census data was not then available. Accordingly, SDE's comment that the low-income percentage for Lafayette Street School, as supported by the 1970 census data, should have been stated as 41.4 is not valid.

If this comment infers that the later availability of the 1970 census data showed the need to recalculate the low-income percentage for Lafayette, the requirement would also have been applicable to *all other* schools and would have produced a revised district-wide average. The City would have had to submit an amended application to SDE, showing the revised calculations and identifying the information sources which had been used. Since an amended application was not submitted to SDE for approval, the data shown in the original application must have been considered valid.

Expenditures for Non-Title I Schools

We agree with the statements by SDE that Title I funds ". . . were not scheduled for any of the schools in question . . . ." Exhibit C, showing the planned budget distribution for school year 1970-71, omits these schools. Our finding did not state that these schools were im-

properly included in the budget. Rather, it pointed out that these schools used Title I funds even though they had been excluded from the application and were therefore ineligible to receive Title I services.

Our analysis of expenditures showed that Title I funds had in fact been expended at these schools. This was authenticated by our comparison of financial data as shown in BOE's Budget Status Report which listed these school expenditures and as shown in the final project expenditures report submitted to SDE. The comparison follows:

	Totals Shown in		
	Budget Status Report	Report of Expenditures	Difference
Approved Project Amount	$9,046,097	$9,046,097	$ —0—
Total Funds Expended	$8,105,308	$8,105,308	$ —0—
Total Funds Committed *	312,330	312,330	—0—
Total Funds Expended and Committed	$8,417,638	$8,417,638	$ —0—
Total Carry-Over to Fiscal Year 1972	$ 628,459	$ 628,459	$ —0—

* Committed funds represent encumbrances

The City presented expenditures and encumbrances in the Budget Status Report in two breakouts: by line item; and by object code, e.g., salaries, textbooks, etc. for each school. Line item totals shown in the annual Report of Expenditures (ESEA Forms 1 and 2) to SDE were derived from the Budget Status Report. Since the reports were in agreement, it is apparent that the expenditures for the 10 ineligible schools, as shown in the Budget Status Report, were also included by line item in the annual Report of Expenditures.

Our analysis of the Budget Status Report indicated that Title I funds used by these 10 schools, included in the expenditures total shown above, were expended for salaries ($40,950) and other costs ($71).

Non-Eligibility of 10 Schools Listed in the 1971-72 Title I Application

We do not agree with the SDE position that our calculations of attendance area eligibility are invalid because they were based on AFDC statistics. SDE's exception is based on the grounds that we had not considered various other sources of data which the City had carefully examined and had used, in addition to the AFDC statistics, in arriving at its eligibility determinations. In support of its statement that these various sources had been used and their use specifically indicated in the application, SDE submitted with its reply page 4b of the application The statements on this attachment (Exhibit D) contradict the position advanced by SDE.

The part of the application submitted by SDE is particularly important since in it the City states the method used in selecting attendance areas for Title I projects. As previously discussed in the finding, the City clearly certified in this part of the application that after examination of eight sources of data it had settled on one. Page 4b of the application stated the decision as follows: "The criterion used in qualifying schools was based on statistics on Aid for Dependent Children supplied by the Essex County Welfare Board." The seven data sources which had been examined but *not* selected for use in determining attendance area eligibility included, as shown on page 4b, housing statistics, free lunch and free breakfast statistics, and other low-income indicators.

As demonstrated in the finding, in the illustration for Madison Street School and in the various computations shown under Chart A, BOE based its low-income percentages exclusively on AFDC data. We had no valid basis to use for our audit determinations on information criterion other than the one selected by the City and approved by SDE. Our audit finding was not concerned so much with the data source selected for use as with the way the data was used. In this context, the SDE reply

did not comment on the basic flaw in BOE's eligibility determinations described in the audit report, namely the use of mathematically unacceptable ratios for computing low-income eligibility.

SDE's statement that ". . . there were 445 children identified as AFDC in the Madison attendance area . . ." misreads the data presented in the illustrative computation for Madison Street School. The basic mathematical flaws in the ratio used by BOE, as shown in our illustrative recomputation for Madison Street School, warranted recognition by SDE. As shown in the audit report, these 445 children represented only those AFDC children attending Madison Street School and did not include other AFDC children in the Madison Street School attendance area who according to their ages were eligible to attend the school but were enrolled in other schools, e.g. schools for the handicapped.

We do not question SDE's assertion that during the period covered by our audit poverty was widespread in the district. This incidence of poverty therefore necessitated closer attention to the calculation of low-income percentages to insure use of Title I funds in eligible low-income attendance areas with the greatest concentrations of educationally disadvantaged children.

OTHER MATTERS

During the discussion of audit results at the exit conference, the Commissioner of Education notified us that the State agency's application review procedures relating to selection of target areas had been strengthened after the period covered by our audit. As substantiation, he later forwarded to us, for our review, copies of the State agency's Guidelines for Approval of ESEA Title I Program Application for fiscal years 1974 and 1975, respectively. We found these documents to be generally similar to those issued in earlier years and without clear evidence that the quality of the State agency review had improved.

APPENDIX A

[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
225 West State Street
Trenton, N.J.

Office of the Commissioner

December 10, 1974

Mr. Bernard Luger
Regional Audit Director
Department of Health, Education
and Welfare
26 Federal Plaza
New York, New York 10007

Dear Mr. Luger:

This acknowledges receipt of the HEW Audit Report of Title I ESEA for the period September 1, 1970 to August 31, 1973.

For purposes of response I have grouped audit exceptions by fiscal year, categories as indicated in your report, audit exception amounts and page numbers. They are:

Fiscal Year 1971—Lafayette Street School ($91,266) page 7.

Fiscal Year 1971—EXPENDITURES FOR NON TITLE I SCHOOLS ($41,021) page 8

Fiscal Year 1972—Non eligibility of 10 schools listed in 1971-1972 application ($1,029,630) pages 9-18

Lafayette Street School

The Draft Audit Report states that Lafayette Street School was ineligible for Title I funds for the school year 1970-71 because its concentration of children from low

income families (23.5%) was below the districtwide average (25.5%). Upon reexamination, we find that the low income percentage for Lafayette School was incorrectly stated in the 1970-71 application. The percent should have been stated as 41.4%. Enclosed in support is data from the 1970 census report. (Exhibit A)[1]

Expenditures for Non-Title I Schools

Our review of the Newark expenditures for 1970-71 does not indicate that Title I funds were allocated to non-Title I schools. I have enclosed for your examination a section of the fiscal year 1971 audit report for Newark. As you will note, the report indicates (item 2) that allocations were made only against approved projects. I have also included for your review the Title I Budget Distribution for 1970-71 which indicates that funds were not scheduled for any of the schools in question. (Exhibits B and C)[1]

Non-Eligibility of 10 schools listed in the 1971-72 Title I Application.

Your report indicated that auditors recalculated the eligibility of ten schools and found them to be below districtwide low income average. It is clear from the information included that only AFDC data was used in the recalculation. The Newark application specifically indicated that a number of data sources, in addition to AFDC, were used. They were Housing Statistics, Model Cities Statistics, Free Lunch and Breakfast Statistics, Incidents of Foreign Born and Non-English Speaking Students, Health Statistics, Unemployment and Underemployed Statistics. Page 4b of that application is included for your review. (Exhibit D)[1]

We concur that there were 445 children identified as AFDC in the Madison attendance area. These were but

[1] Exhibit identification shown by HEW Audit Agency to facilitate reference.

a portion of the total low income population which is more accurately reflected by the average daily free lunch attendance (919) for the Madison School. I have included free lunch data for the Madison School. (Exhibit E)[1]

The situation referred to above applies to the cited secondary schools, also. Although Clinton Place Junior High School identified only 491 students from AFDC data, these children were a part of a total of 1,032 low income children residing in the attendance area. I have again attached free lunch data. It is our contention that if auditors had considered data other than AFDC, they would have determined that each of the 10 schools cited was eligible as listed.

Department Staff has undertaken to provide accurate responses to what we consider serious allegations. In each case, schools of the district in question have been visited. It is our conclusion that poverty during the period in question was so widespread that there were a few schools truly ineligible. The district did attempt to follow regulations in the development and provision of services. In the process they may not have been as definitive as some of us would require. Nevertheless, I am assured that their actions were consistent with the applicable laws and regulations.

Sincerely yours,

/s/ Fred G. Burke
FRED G. BURKE
Commissioner of Education

EXHIBIT A

LEGEND

A. ESTIMATED NUMBER OF ELEMENTARY SCHOOL-AGE CHILDREN (5-13)
B. ESTIMATED NUMBER OF DISADVANTAGED ELEMENTARY SCHOOL-AGE CHILDREN (5-13)
C. PERCENTAGE OF ELEMENTARY SCHOOL-AGE CHILDREN (5-13) WHO ARE DISADVANTAGED
D. SCHOOL RANK - NUMBER OF DISADVANTAGED CHILDREN
E. SCHOOL RANK - PERCENTAGE OF DISADVANTAGED CHILDREN
F. TOTAL NUMBER OF NON-WHITE ELEMENTARY SCHOOL-AGE CHILDREN (5-13)
G. TOTAL NUMBER OF PRE-SCHOOL AGE CHILDREN (UNDER 5)
H. TOTAL NUMBER OF SCHOOL-AGE CHILDREN (5-17)
I. SCHOOL GROWTH INDEX (G/H)
J. TOTAL ATTENDANCE AREA POPULATION
K. NON-WHITE PERCENTAGE OF TOTAL POPULATION
L. AVERAGE NUMBER OF PERSONS PER HOUSEHOLD
M. PERCENTAGE OF CHILDREN UNDER 18 NOT LIVING WITH MALE PARENT

	SCHOOL NAME	A	B	C	D	E	F	G	H	I	J	K	L	M
11	ABINGTON AVE	962	390	40.5	31	29	225	532	1436	0.4	7742	16.5	2.43	22.6
101	BROADWAY-BROADWAY JR	1649	668	40.5	12	21	1123	903	2278	0.4	6920	60.9	3.52	38.5
111	SUMMIT STREET	1527	746	48.9	6	6	931	922	2069	0.4	8291	50.6	2.65	40.9
121	CAMDEN ST-WEST KINNEY JR	1238	562	45.4	17	15	1133	713	1655	0.4	4642	92.7	3.75	46.6
131	CENTRAL AVE	913	445	48.2	25	7	625	439	1345	0.3	3787	66.0	3.64	34.7
141	CHANCELLOR AVE	2330	356	17.5	37	45	1800	1123	2728	0.4	10445	81.8	3.31	24.6
151	CHARLTON STREET	625	290	45.8	42	15	600	364	855	0.4	3409	95.7	2.67	41.4
171	CHRISTOPER COLUMBUS	925	163	17.6	48	44	124	569	1332	0.4	7171	9.1	2.91	13.9
181	CLEVELAND-WEST KINNEY JR	1266	616	48.6	14	9	1257	723	1749	0.4	4336	97.8	3.44	54.4
21	ALEXANDER STREET	1232	162	14.8	45	47	96	605	1807	0.3	8763	5.8	3.04	13.3
201	DAYTON STREET	1382	760	55.4	6	3	867	695	1848	0.4	7031	52.4	2.56	34.6
211	EIGHTEENTH AVE-WEST KINNEY JR	256	140	54.6	49	2	253	116	342	0.3	997	97.5	3.22	52.4
221	ELLICTT ST-BROADWAY JR	1456	322	22.4	39	42	155	806	2047	0.4	9928	11.4	2.73	20.2
231	FIFTEENTH AVE-SOUTH 7TH ST	1405	459	32.6	23	23	1255	899	1843	0.5	5421	90.8	3.79	52.8
241	FOURTEENTH AVE	719	299	41.6	41	18	637	423	951	0.4	2690	88.3	3.78	49.0
251	FRANKLIN-WEBSTER JR	2090	779	37.3	7	25	625	1336	2945	0.5	12273	24.0	3.10	28.7
261	GARFIELD	1506	362	24.0	35	39	665	941	2133	0.4	9614	30.1	2.99	26.4
271	TUBMAN-HARVEY	1269	466	36.5	20	23	1179	742	1632	0.4	4832	92.3	3.81	47.4
281	HAWKINS ST	1552	734	47.3	9	12	505	786	2157	0.4	7254	26.1	3.30	26.3
291	HAWTHORNE AVE	1760	374	21.3	33	43	1655	943	2401	0.4	8136	92.9	3.66	37.6
31	ANN STREET	1428	439	30.7	26	33	16	706	2144	0.3	10341	0.9	3.11	7.3
301	LAFAYETTE STREET	1396	572	41.2	16	19	185	748	2042	0.4	9423	10.8	3.21	11.4
311	LINCOLN	1575	231	14.7	44	49	21	691	2387	0.3	11750	1.0	3.00	9.1
321	MADISON-HUDSON-SOUTH 7TH AVE JR	2540	641	25.2	13	31	2420	1200	3455	0.3	11406	91.8	3.52	32.9
331	MAPLE AVE	2371	351	14.8	38	46	2213	1506	3694	0.4	13456	85.2	3.17	24.2
41	AVON AVE-CLINTON PL JR	1501	549	36.6	15	26	1448	992	2016	0.5	6424	96.7	3.68	44.7

"ESTIMATED DISADVANTAGED CHILDREN" IS THE NUMBER OF CHILDREN LIVING IN CROWDED HOUSING AVERAGED WITH THE NUMBER LIVING IN LOW RENT (UNDER $ 60/MONTH) AND LOW VALUE (UNDER $10000) HOUSING.

PRODUCED BY APPLIED URBANETICS, INC., WASHINGTON, D.C.

EXHIBIT B

ELEMENTARY AND SECONDARY EDUCATION ACT (P.L. 89-10) PROGRAMS

The records submitted to us disclosed that:

1. Obligations reported were incurred during the fiscal year or project period for which the project was approved and, upon liquidation, were properly adjusted.
2. All obligations made for Federally supported Elementary and Secondary Education Act projects were made against approved projects.
3. Costs, such as salaries, travel, etc., were correctly prorated.

Examination of records was made in accordance with minimum audit requirements set forth by the State Department of Education on Elementary and Secondary Education Act operations.

The Elementary and Secondary Education Act financial exhibits contained herein (Exhibits A-14 through A-18) represent a true statement of the financial position pertaining to projects under Titles I, II, VIA and VIB of the Elementary and Secondary Education Act of 1965, P.L. 89-10.

During the year, the Board was allocated $9,589,400.00 of Federal funds for special education programs for educationally deprived children as follows:

	Title I	Title II	Title VI-A	Title VI-B	Total
Federal funds	$9,400,360.00	$102,780.00	$10,550.00	$75,710.00	$9,589,400.00
Cash Advanced to June 30, 1971	6,645,062.00	102,780.00	--	26,000.00	6,773,842.00
Receivable at June 30, 1971	$2,755,298.00	$ --	$10,550.00	$49,710.00	$2,815,558.00

Expenditures amounted to $8,958,548.68 and are classified as follows:

	Budget	Expenditures	Balance
Administration	$ 250,077.00	$ 113,529.69	$136,547.31
Instruction	5,693,152.00	5,573,429.06	119,722.94
Attendance and Health Services	453,604.91	452,698.35	906.56
Transportation	146,981.00	140,907.50	6,073.50
Operation of Plant	48,284.00	41,499.93	6,784.07
Maintenance of Plant	110,114.80	102,326.35	7,788.45
Fixed Charges	844,754.00	685,439.76	159,314.24
Food Services	121,100.00	119,242.45	1,857.55
Community Services and Civic Activities	1,790,537.29	1,610,083.78	180,453.51
Capital Outlay	130,795.00	119,391.81	11,403.19
	$9,589,400.00	$8,958,548.68	$630,851.32

EXHIBIT B-1

1. The detail of the individual accounts comprising the opening balances of the Tuition Receivable Account at July 1, 1970 did not agree with the prior year's audit report in the amount of $778.00.

   We recommend that this difference be reconciled and the necessary adjustments recorded.

2. At June 30, 1971, there was $9,777,625.00 due from the City of Newark representing the balance of the proceeds of a bond sale in March 1971.

   We recommend that proceeds from the sale of bonds be promptly deposited with the Custodian of School Moneys in accordance with R.S. 18:24-47.

IMPROVEMENT AUTHORIZATIONS

1. At June 30, 1971, there were unfunded deferred charges of $755,00.00 representing improvement authorizations that were recorded by the Board before bond ordinances were adopted by the Municipal Council.

   We recommend that improvement authorizations be recorded after the adoption of bond ordinances by the Municipal Council and that no disbursements be made until such time.

FEDERAL PROJECTS

1. During our examination of expenditures for Federal programs, we determined that not all reports requesting reimbursement for these expenditures were filed on a timely basis.

   We recommend that reports requesting reimbursement from Federal agencies be filed on a timely basis in order to minimize delays in collection.

ELEMENTARY AND SECONDARY EDUCATION ACT 1965

1. During our audit of the Elementary and Secondary Education Act funds, we noted there are receivables of $137,763.64 for the 1968-1969 program that are disputed by the Federal Government.

   If the claim for the receivable is denied by the Government, we recommend that the balance be cancelled by the Board by resolution.

2. At June 30, 1971, the Board did not issue a blanket order for program expenditures for the period July 1, 1971 to August 31, 1971 as required under the Act for those programs ending August 31, 1971.

   We recommend that the Board comply with the Act.

-10- K/106 1/216

EXPENDITURES FOR 4-TITLE I SCHOOLS

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

EXHIBIT C

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

ELEMENTARY SCHOOLS	B.R.L. Programmed Reading 02240007	Participating Students 02120006	Project Coordinator 02120006	Project/Dem. Development Teachers 02130001	Substitutes 1/10 @ $35 02130001	Clerk Steno 02150101	Teacher Aides ½ Ea.-Kdg. ½ Ea. 1st Gr. 02160003	Community Aides @ $6/P.S. 02160009	Textbooks @ $6/P.S. 02200001	Instructional Sup. @ $6/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500109	E.E.E. Activities @ $3/P.S. 02500121	Transportation @ $4/P.S. 05200105	Telephone Base $100 06411401	New Equipment @ $1/P.S. 12600101	Totals
			No. Amt.	No. Amt.	No. Amt.	No. Amt.	No. Amt.	No. Amt.								
Abington Avenue		298	1 $ 14,450	2 $ 25,670	30 $ 1,050	1 $ 5,005	2 $ 6,106	1 $ 3,053	$ 1,788	$ 1,788	$ 298	$ 1,192	$ 1,192	$ 125	$ 298	$ 62,0
Avon Avenue		413	1 14,450	2 25,670	41 1,435	1 5,005	6 18,318	1 3,053	2,478	2,478	413	1,652	1,652	150	413	77,2
Belmont-Runyon		340	1 14,450	2 25,670	34 1,190	1 5,005	8 24,424	1 3,053	2,040	2,040	340	1,360	1,360	125	340	81,4
Bergen Street		524	1 14,450	3 38,505	52 1,820	1 5,005	8 24,424	1 3,053	3,144	3,144	524	2,096	2,096	150	524	99,0
Bragaw Avenue		580	1 14,450	3 38,505	58 2,030	1 5,005	6 18,318	1 3,053	3,480	3,480	580	2,320	2,320	150	580	94,3
Broadway Elementary	I	306	1 14,450	2 25,670	31 1,085	1 5,005	6 18,318	1 3,053	1,836	1,836	306	1,224	1,224	125	306	74,5
Burnet Street	I	294	1 14,450	2 25,670	29 1,015	1 5,005	4 12,212	1 3,053	1,764	1,764	294	1,176	1,176	125	294	68,0
Camden Street		515	1 14,450	3 38,505	52 1,820	1 5,005	15 45,795	1 3,053	3,090	3,090	515	2,060	2,060	150	515	120,1
Central Avenue		227	1 14,450	2 25,670	23 805	1 5,005	3 9,159	1 3,053	1,362	1,362	227	908	908	125	227	63,3
Charlton Street	I	413	1 14,450	2 25,670	41 1,435	1 5,005	6 18,318	1 3,053	2,478	2,478	413	1,652	1,652	150	413	77,2
Clinton Avenue	I	246	1 14,450	2 25,670	25 875	1 5,005	7 21,371	1 3,053	1,476	1,476	246	984	984	125	246	76,0
Dayton Street		374	1 14,450	3 38,505	37 1,295	1 5,005	7 21,371	1 3,053	2,244	2,244	374	1,496	1,496	125	374	82,1
Eighteenth Avenue		337	1 14,450	2 25,670	34 1,190	1 5,005	6 18,318	1 3,053	2,022	2,022	337	1,348	1,348	125	337	75,2
Fifteenth Avenue	555	555	1 14,450	3 38,505	50 1,750	1 5,005	11 33,583	1 3,053	2,970	2,970	495	1,980	1,980	150	495	107,4
Fourteenth Avenue		365	1 14,450	2 25,670	39 1,365	1 5,005	5 15,265	1 3,053	2,310	2,310	385	1,540	1,540	125	385	73,1
Franklin		279	1 14,450	2 25,670	28 980	1 5,005	5 15,265	1 3,053	1,674	1,674	279	1,116	1,116	125	279	70,8
Hawkins		360	1 14,450	2 25,670	36 1,260	1 5,005	6 18,318	1 3,053	2,160	2,160	360	1,440	1,440	125	360	76,8
Hawthorne Avenue		562	1 14,450	3 38,505	56 1,960	1 5,005	6 18,318	1 3,053	3,372	3,372	562	2,248	2,248	150	562	93,1
Hudson Street		149	½ 7,225	½ 6,418	15 525	1 5,005	-	1 3,053	894	894	149	596	596	100	149	25,0
Lafayette Street		440	1 14,450	2 25,670	44 1,540	1 5,005	6 18,318	1 3,053	2,640	2,640	440	1,760	1,760	150	440	77,0
Madison Annex		85	½ 7,225	½ 6,418	9 315	1 5,005	9 27,477	½ 1,527	510	510	85	340	340	100	85	[illegible]
Madison Avenue 151		444	1 14,450	3 38,505	44 1,540	½ 5,005	-	½ 1,526	2,664	2,664	444	1,776	1,776	150	444	[illegible]
McKinley		303	1 14,450	3 38,505	30 1,050	1 5,005	10 30,530	1 3,053	1,818	1,818	303	1,212	1,212	125	303	99,
Miller Street		535	1 14,450	3 38,505	59 2,065	1 5,005	9 27,477	1 3,053	3,510	3,510	585	2,340	2,340	150	585	103,
Morton Street		440	1 14,450	2 25,670	41 1,435	1 5,005	4 12,212	1 3,053	2,640	2,640	440	1,760	1,760	150	440	71,
Newton Street	I	307	1 14,450	2 25,670	31 1,085	1 5,005	4 12,212	1 3,053	1,842	1,842	307	1,228	1,228	125	307	65,
Oliver Street		259	1 14,450	2 25,670	26 910	1 5,005	4 12,212	1 3,053	1,554	1,554	259	1,036	1,036	125	259	67,
Peshine Avenue		610	1 14,450	3 38,505	61 2,135	1 5,005	9 27,477	1 3,053	3,660	3,660	610	2,440	2,440	175	610	109,
Quitman Street		675	1 14,450	3 38,505	68 2,380	1 5,005	10 30,530	1 3,053	4,050	4,050	675	2,700	2,700	175	675	109,
Robert Treat	I	492	1 14,450	3 38,505	49 1,715	1 5,005	4 12,212	1 3,053	2,952	2,952	492	1,968	1,968	150	492	85,
Roseville Avenue		157	1 14,450	1 12,835	16 560	1 5,005	8 6,106	1 3,053	942	942	157	628	628	100	157	45,
South Street	I	107	1 14,450	1 12,835	11 385	1 5,005	4 12,212	1 3,053	654	654	109	436	436	100	109	50,
South 7th Street		814	1 14,450	4 51,340	81 2,835	1 5,005	11 33,583	1 3,053	4,884	4,884	814	3,256	3,256	200	814	133,
South 11th Street		619	1 14,450	3 38,505	62 2,170	1 5,005	8 24,424	1 3,053	3,714	3,714	619	2,476	2,476	175	619	101,
South 10th Street		269	1 14,450	2 25,670	27 945	1 5,005	6 18,318	1 3,053	1,614	1,614	269	1,076	1,076	175	269	73,
Spruce Avenue		298	1 14,450	3 38,505	30 1,050	1 5,005	6 18,318	1 3,053	1,788	1,788	298	1,192	1,192	125	298	87,
Union Avenue		440	1 14,450	3 38,505	44 1,540	1 5,005	6 18,318	1 3,053	2,640	2,640	440	1,760	1,760	150	440	90,
Vaux Street		197	1 14,450	1 12,835	20 700	1 5,005	2 6,106	1 3,053	1,182	1,182	197	788	788	100	197	46,
Waverly Avenue	I	209	1 14,450	1 12,835	21 735	1 5,005	4 12,212	1 3,053	1,254	1,254	209	836	836	125	209	59,
Wilson Avenue		366	1 14,450	2 25,670	37 1,295	1 5,005	4 12,212	1 3,053	2,196	2,196	366	1,464	1,464	125	366	69,
Not Distributed - B.R.L.																31

EXHIBIT C-1

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

SECONDARY SCHOOLS

SENIOR HIGH SCHOOLS	Participating Students	Project Coordinator 02120005 No.	Project Coordinator 02120005 Amt.	Project/Dev. Development Teachers 02130001 No.	Project/Dev. Development Teachers 02130001 Amt.	Substitutes 1/10 @ $35 02130001 No.	Substitutes 1/10 @ $35 02130001 Amt.	Work(12 mo.) Experience Teachers 02140202 No.	Work(12 mo.) Experience Teachers 02140202 Amt.	Clerk Steno 02130101 No.	Clerk Steno 02130101 Amt.	Textbooks @ $5/P.S. 02200001	Instructional Sup. @ $5/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500309	E.E.E. Activities @ $5/P.S. 02500321	Transportation @ $4/P.S. 05200305	Telephone Base $100 06400401	New Equipment @ $1/P.S. 12400301	Total
Barringer High	586	1	$ 14,450	1	$ 12,835	59	$ 2,065	-		1	$ 5,085	$ 3,516	$ 3,516	$ 586	$ 2,344	$ 2,344	$ 150	$ 586	$ 47,1
Central High	653	1	14,450	1	12,835	65	2,275	1	$ 14,455	1	5,085	3,918	3,918	653	2,612	2,612	175	653	63,(
East Side High	357	1	14,450	1	12,835	36	1,260			1	5,085	2,142	2,142	357	1,428	1,428	125	357	41,(
South Side High	473	1	14,450	1	12,835	47	1,645	1	14,455	1	5,085	2,838	2,838	473	1,892	1,892	150	473	59,(
Weequahic High	410	1	14,450	1	12,835	41	1,435	1	14,455	1	5,085	2,460	2,460	410	1,640	1,640	150	410	57,(
West Side High	405	1	14,450	1	12,835	41	1,435	1	14,455	1	5,085	2,430	2,430	405	1,620	1,620	150	405	57,(
TOTALS SENIOR HIGH SCHOOLS	2,834	6	$ 86,700	6	$ 77,010	289	$ 10,115	4	$ 57,820	6	$ 30,510	$ 17,304	$ 17,304	$ 2,884	$ 11,536	$ 11,536	$ 900	$ 2,824	$ 326,(
JUNIOR HIGH SCHOOLS																			
Broadway Jr. High	159	1	$ 14,450	1	$ 12,835	16	$ 560			1	$ 5,085	$ 954	$ 954	$ 159	$ 636	$ 636	$ 100	$ 159	$ 36,5
Clinton Place Jr. High	441	1	14,450	3	38,505	44	1,540			1	5,085	2,646	2,646	441	1,764	1,764	150	441	69,4
Seventh Avenue Jr. High	278	1	14,450	2	25,670	28	980			1	5,085	1,668	1,668	278	1,112	1,112	125	278	52,4
Webster Jr. High	168	1	14,450	2	25,670	17	595			1	5,085	1,008	1,008	168	672	672	100	168	49,5
TOTALS JR. HIGH SCHOOLS	1,046	4	$ 57,800	8	$ 102,680	105	$ 3,675			4	$ 20,340	$ 6,276	$ 6,276	$ 1,046	$ 4,184	$ 4,184	$ 475	$ 1,046	$ 207,5(
TOTALS SECONDARY SCHOOLS	3,930	10	$144,500	14	$ 179,690	394	$ 13,790	4	$ 57,820	10	$ 50,850	$ 23,580	$ 23,580	$ 3,930	$ 15,720	$ 15,720	$ 1,375	$ 3,930	$ 534,18

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EXHIBIT C-2

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

Budget Distribution 1970-1971

SPECIAL SCHOOLS	B.R.L. Programmed Reading 02200009	Participating Students	Project Coordinator 02120006		Project/Rem. Development Teachers 02130001		Substitutes 1/10 @335 02130001		Work(12 mo.) Experience Teachers 02140202		Clerk Steno 02150101		Teacher Aides 1 La. Kdg. ½ La. 1st Gr. 02160007		Textbooks 0236/P.S. 02200001	Instructional Sup. 0236/P.S. 02400007	Misc. Expenses 0251/P.S. 02500309	E.E.E. Activities 0254/P.S. 02500321	Transportation 0254/P.S. .05200105	Telephone Base 3:00 0261/P.S. 06100101	New Equipment 0251/P.S. 12100101	
			No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.								
Alyea Street		23	½	$ 7,225	½	$ 6,418	2	$ 70			½	$2,542	2	$ 6,106	$ 138	$ 138	$ 23	$ 92	$ 92	$ 100	$ 23	$
Arlington Avenue		44	½	7,225	½	6,417	4	140			½	2,543	2	6,106	264	264	44	176	176	100	44	
Boylan Street		392	½	7,225	½	6,418	95	315			½	2,542	2	6,106	552	552	92	368	368	100	92	i
Branch Brook		269	½	7,225	½	6,417	72	245			½	2,543	2	6,106	414	414	69	276	276	100	69	
Bruce Street Deaf		49	½	7,225	½	6,418	5	175			½	2,542	2	6,106	294	294	49	196	196	100	49	
Elliott Street Blind		21	-		-		2	70			1	5,085	1	3,053	126	126	21	84	84	100	21	
Girls' Trade	X	91	½	7,225	½	6,417	9	315			½	2,542	2	6,106	546	546	91	364	364	100	91	
Montgomery Street		313	1	14,450	1	12,835	31	1,085	1	14,455	1	5,085	3	9,159	1,878	1,878	313	1,252	1,252	125	313	
South Eleventh Street		98	½	7,225	½	6,418	10	350			½	2,543	3½	9,159	588	588	98	392	392	100	98	
South Market Street		46	½	7,225	½	6,417	5	175			½	2,543	2	6,106	276	276	46	184	184	100	46	
Wickliffe Street		32	½	7,225	½	6,417	3	105			½	2,543	1	3,053	192	192	32	128	128	100	32	
Woodland Avenue		32	½	7,225	½	6,417	3	105			½	2,543	1	3,053	192	192	32	128	128	100	32	
TOTALS SPECIAL SCHOOLS	$3,888	910	6	$86,700	6	$ 77,009	90	$3,150	1	$14,455	7	$35,556	23	$70,219	$ 5,460	$ 5,460	$ 910	$ 3,640	$ 3,640	$ 1,225	$ 910	$

EXHIBIT C-3

August 25, 1970

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

Public Schools	Participating Students	Project Coordinator 02120006 No.	Project Coordinator 02120006 Amt.	Project/Ten. Development Teachers 02130101 No.	Project/Ten. Development Teachers 02130101 Amt.	Substitutes 1/10 @ $35 02130001 No.	Substitutes 1/10 @ $35 02130001 Amt.	Clerk Steno 02150101 No.	Clerk Steno 02150101 Amt.	Teacher Aides 1 Ea. Kdg. ½ Ea. 1st Gr. 02160007 No.	Teacher Aides 1 Ea. Kdg. ½ Ea. 1st Gr. 02160007 Amt.	Community Aides 02160009 No.	Community Aides 02160009 Amt.	Textbooks @ $6/P.S. 02200101	Instructional Sup. @ $6/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500109	E.E.E. Activities @ $4/P.S. 02500121	Transportation @ $4/P.S. 05200121	Telephone Base $100 06100401	New Equipment @$1/P.S. 12600101	Totals
...en of Angels	100	½	$ 4,575	½	$ 4,200	10	$ 350	½	$ 2,542	1	$ 3,053	1	$ 3,053	$ 600	$ 600	$ 100	$ 400	$ 400	$ 100	$ 100	$ 20,073
...Alysius	133	½	4,575	½	4,200	13	455	½	2,542	1	3,053	1	3,053	798	798	133	532	532	100	133	20,505
...Ann	133	½	4,575	½	4,200	13	455	½	2,542	1	3,053	1	3,053	798	798	133	532	532	100	133	20,994
...Antonious	118	½	4,575	½	4,200	12	420	½	2,542	1	3,053	1	3,053	708	708	118	472	472	100	118	20,540
...Augustine	66	½	4,575	½	4,200	7	245	½	2,542	1	3,053	1	3,053	396	396	66	264	264	100	66	19,220
Charles Borromeo	124	½	4,575	½	4,200	12	420	½	2,542	2	6,106	1	3,053	744	744	124	496	496	100	124	21,725
Columba	139	½	4,575	½	4,200	14	490	½	2,542	2	6,106	1	3,053	834	834	139	556	556	100	139	24,124
Lucy	89	½	4,575	½	4,200	9	315	½	2,542	1	3,053	1	3,053	534	534	89	356	356	100	89	19,797
Mary	110	½	4,575	½	4,200	11	385	½	2,542	1	3,053	1	3,053	660	660	110	440	440	100	110	20,328
Michael	256	1	9,150	1	8,400	26	910	½	2,542	3	9,159	1	3,053	1,536	1,536	256	1,024	1,024	125	256	33,972
Patrick	93	½	4,575	½	4,200	9	315	½	2,542	1	3,053	1	3,053	558	558	93	372	372	100	93	19,884
...Teresa	109	½	4,575	½	4,200	11	385	½	2,542	2	6,106	1	3,053	654	654	109	436	436	100	109	23,360
...diem School	-	-		-		-		½	2,542	-		-		-	-	-	-	-	-	-	2,542
...ALS NON PUBLIC SCHOOLS	1,670	6½	$ 59,475	6½	$ 54,600	147	5,145	6½	$33,052	17	$ 51,901	12	$ 35,636	$ 8,820	$ 8,820	$ 1,670	$ 5,880	$ 5,[illegible]	$ 1,225	$ 1,670	$ 274,374

EXHIBIT C-4

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

SCHOOLS FOR BILINGUAL PROGRAMS	Participating Students	Project Coordinator 02120005 No.	Project Coordinator 02120005 Amt.	Clerk Steno 02150101 No.	Clerk Steno 02150101 Amt.	Textbooks @ $6/P.S. 02200021	Instructional Sup. @ $6/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500309	E.E.E. Activities @ $4/P.S. 02500121	Transportation @ $1/P.S. 05200305	Telephone Base $100 06400401	New Equipment @ $1/P.S. 12400301	Totals
Quitman Elementary - Bilingual	119	1/2	$ 7,225	1/2	$ 2,543	$ 714	$ 714	$ 119	$ 476	$ 476	$ 100	$ 119	$ 12,436
Broadway Jr. High - Bilingual	61	1/2	7,225	1/2	2,543	366	366	61	244	244	100	61	11,210
Burnet Street - Bilingual	186	1	14,450	1/2	2,543	1,116	1,116	186	744	744	100	186	21,185
Franklin - Bilingual	149	1	14,450	1/2	2,543	894	894	149	596	595	100	149	20,171
McKinley - Bilingual	346	1	14,450	1/2	2,543	2,076	2,076	346	1,384	1,384	125	346	24,730
Oliver Street - Bilingual	127	1	14,450	1/2	2,543	762	762	127	508	508	100	127	19,087
South Street - Bilingual	61	1	14,450	1/2	2,543	366	366	61	244	244	100	61	18,435
Sumner Avenue - Bilingual	217	1	14,450	1/2	2,543	1,302	1,302	217	868	868	125	217	21,692
Webster Jr. High - Bilingual	87	1/2	14,450	1/2	2,543	522	522	87	348	348	100	87	19,007
TOTALS SCHOOLS FOR BILINGUAL PROGRAMS	1,353	8	$115,600	1/2	$22,887	$8,118	$ 8,118	$ 1,353	$ 5,412	$ 5,412	$ 950	$ 1,353	$ 169,203

EXHIBIT C-5

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

SCHOOL BUDGET	Participating Students	Project Coordinator 02120005	Project/Dem. Substitutes Development. Teachers 02130001	1/10 @ $35 02130001	Work Exp. Tchrs. (12 mo.) 02160702	Clerk Steno 02150101	Teacher Aides 1 En.Kdgt. ½ En. 1st Gr. 02160007	Community Aides 02160009	Textbooks @ $6/P.S. 02200001	Instructional Sup. @ $5/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500109	E.P.E. Activities @ $4/P.S. 02500321	Transportation @ $4/P.S. 05200105	Telephone Base $100 @ $1/P.S. 06100101	New Equipment @ $1/P.S. 12400101	B.R.I. Programmed Reading 02200009	Totals
ELEMENTARY	15,185	$ 563,550	$1,155,151	$ 53,270	-	$ 198,315	$ 732,720	$ 119,067	$ 91,110	$ 91,110	$ 15,185	$ 60,740	$ 60,740	$ 5,425	$ 15,185	$ 31,112	$3,192,6
SECONDARY	3,930	144,500	179,690	13,790	$ 57,820	50,850	-	-	23,580	23,580	3,930	15,720	15,720	1,375	3,930	-	534,4
SPECIAL	910	85,700	77,009	3,150	14,455	35,596	70,219	-	5,460	5,460	910	3,640	3,640	1,225	910	3,888	312,2
NON PUBLIC	1,470	59,675	54,600	5,145	-	33,052	51,901	36,636	8,820	8,820	1,470	5,880	5,880	1,225	1,470	-	274,3
No. of Personnel		(6½)	(110½)		(5)	(62½)	(280)	(51)									
SUB TOTALS	21,495	$854,225	$1,466,450	$75,355	$72,275	$317,813	$854,840	$155,703	$128,970	$128,970	$21,495	$85,980	$85,980	$9,250	$21,495	$35,000	$4,313,8
Early Childhood Kdg. Title III	-	-	(8) 380,000	$ 4,620	-	-	-	-	-	-	-	-	-	-	-	-	$ 84,6
			$1,546,450	$79,975													
FROM FUNDS OTHER BUDGET																	
Bilingual Program	1,353	(8)$115,600	-	-	-	(1½)$22,887	-	-	$ 8,118	$ 8,118	$ 1,353	$ 5,412	$ 5,412	$ 950	$ 1,353	-	$ 169,2
Experimental Classes at Robert Treat School		-	-	-	-	-	(8) $24,474	-	-	$ 4,000	-	$ 1,800	$ 1,200	-	-	-	$ 31,4

EXHIBIT C-6

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970.

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

SCHOOL SUMMARY	Participating Students	Project Coordinator 02120006	Project/Dem. Development. Teachers 02130001	Substitutes 1/10 @ $35 02130001	Work Exp. Tchrs. (12 no.) 02140202	Clerk Steno 02150101	Teacher Aides ½ Ea. Edgt. & Ea. 1st Gr. 02160007	Community Aides 02160009	Textbooks @ $5/P.S. 02200001	Instructional Sup. @ $5/P.S. 02100007	Misc. Expenses @ $1/P.S. 02500309	E.E.E. Activities @ $4/P.S. 02500321	Transportation @ $4/P.S. 05200305	Telephone Base $100 06100101	New Equipment @ $1/P.S. 12100101	B.R.L. Programmed Reading 02200009	
ELEMENTARY	15,185	$ 563,550	$1,155,151	$ 53,270	-	$ 198,315	$ 732,720	$ 119,067	$ 91,110	$ 91,110	$ 15,185	$ 60,740	$ 60,740	$ 5,425	$ 15,185	$ 31,112	$
SECONDARY	3,930	144,500	179,690	13,790	$ 57,820	50,850	-	-	23,580	23,580	3,930	15,720	15,720	1,375	3,930	-	
SPECIAL	910	86,700	77,009	3,150	14,455	35,596	70,219	-	5,460	5,460	910	3,640	3,640	1,225	910	3,833	
NON PUBLIC	1,470	59,475	54,600	5,145	-	33,052	51,901	36,636	8,820	8,820	1,470	5,880	5,880	1,225	1,470	-	
No. of Personnel		(61½)	(116½)		(5)	(62½)	(200)	(51)									
SUB TOTALS	21,495	$954,225	$1,466,450	$75,355	$72,275	$317,813	$854,840	$155,703	$128,970	$128,970	$21,495	$85,980	$85,980	$9,250	$21,495	$35,000	$
Early Childhood Edg. Title III	-		(8) $80,000	$ 4,620	-	-	-	-	-	-	-	-	-	-	-	-	$
			$1,546,450	$79,975													
FROM C/FWY OVER BUDGET																	
Bilingual Program	1,353	(8) $115,600	-	-	-	(4½) $22,807	-	-	$ 8,118	$ 8,118	$ 1,353	$ 5,412	$ 5,412	$ 950	$ 1,353	-	$
Experimental Classes at Robert Treat School		-	-	-	-	-	(8) $24,474	-	-	$ 4,000	-	$ 1,800	$ 1,200	-	-	-	
GRAND TOTALS	22,848	$[illegible]	[illegible]														

SELECTION OF ATTENDANCE AREAS FOR TITLE I PROJECTS

The attendance areas selected for Title I projects are those areas which, on the basis of the best available information have high concentrations of children from low-income families.

Eligible schools have been listed in order of highest concentration. The criterion used in qualifying schools was based on statistics on Aid for Dependent Children supplied by the Essex County Welfare Board.

Before selecting this method for qualifying attendance areas and schools within those attendance areas the following data were also examined:

- Housing statistics supplied by Applied Urbanetics
- Model Cities Statistics (Entire City of Newark is now a Model Neighborhood)
- Free lunch and free breakfast statistics (32,865 served daily)
- High percentage of Puerto Rican children
- High incidence of foreign born and non-English speaking children
- Health Statistics
- Unemployment and Underemployed statistics

It should be noted that in comparing the statistics and projections compiled by Applied Urbanetics and the A.D.C. statistics provided by the Essex County Welfare Board, that each complements (possibly validates) the other.

	Applied Urbanetics	ADC Statistics
Children from low-income families 5-17	33,011	32,352
District Wide Percentage	32.6%	33.9%

EXHIBIT E

AVERAGE DAILY PARTICIPATION	Oil Type "A"	Type	Daily Average
	47[illegible]	764	338
	10458	2.87	5.48
	16481	1093	5.25
	11003	1745	3.61
	17451	2105	1.34
	12531	974	1.31
	10277	1724	6.46
	5234	1256	4.64
JUNIOR HIGH SCHOOLS	86,300	11,363	8,315
	27[illegible]3	20426	14.55
	24[illegible]8	11634	10.32
	25147	20152	13.47
	6567	5127	3.28
	11525	13024	8.76
	98777	71,419	4.991
	68749	5317	3.47
	5632	1851	2.34
	4349	2412	4.65
	8536	1041	6.21
	13623	9813	6.03
	14721	12744	7.46
	10831	8701	5.42
	20177	17616	15.21
	6563	2465	3.23
	15169	13654	7.32
	7931	5911	3.42
	14732	10411	7.48
	13244	8654	6.45
	11623	11012	2.91
	12662	9614	6.03
	10113	7314	5.66
	13773	9465	6.67
	10153	10241	7.24
	6641	5612	3.23
	9901	3407	4.75
	18373	12701	5.[illegible]5
	3769	2901	1.23
	14287	11955	6.64
	19725	12703	9.46
	11534	11355	5.71
	7224	6564	3.72
	10423	9871	5.11
	9265	6031	4.13
	13320	8717	6.76
	2656	1526	1.34
	21774	14673	11.06
	5312	1931	2.74
	14771	13010	6.64
	23356	14370	11.41
	20423	15465	12.3
	4734	4035	2.38
	4661	4175	3.13
	11[illegible]3	10365	6.46
	6188	4690	3.09
	4744	3033	4.37
	447048	326011	222352
	1720	1410	86
	1663	1166	38
	3120	1150	106
	1644	1398	84
	3381	2897	135
	3917	3111	176
	4326	3164	213
	[illegible]3	[illegible]34	35
	24951	15716	1249
	657306	427507	32563

NEW JERSEY STATE DEPARTMENT OF EDUCATION

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REPORT ON REVIEW OF THE ADMINISTRATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 COMMONWEALTH OF PENNSYLVANIA

FOR THE PERIOD JULY 1, 1967 THROUGH JUNE 30, 1973

Philadelphia Regional Office
April 1975

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ABBREVIATIONS

LEA	Local Education Agency
OE	Office of Education
SEA	State Education Agency

REPORT ON REVIEW OF THE ADMINISTRATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 COMMONWEALTH OF PENNSYLVANIA

FOR THE PERIOD JULY 1, 1967 THROUGH JUNE 30, 1973

INTRODUCTION

The HEW Audit Agency has reviewed the management activities of the Pennsylvania Department of Education (State Educational Agency) relating to administering programs under grants received under Title I of the Elementary and Secondary Education Act of 1965, Public Law 89-10. The Act authorized Federal support to local educational agencies (LEAs) for special educational projects for educationally deprived children in areas having a high concentration of low-income families. Public Laws 89-313 and 89-750 extended the scope of the program to include support for handicapped and institutionalized children.

BACKGROUND

Title I authorized Federal grants to LEAs for special educational projects for educationally deprived children in attendance areas where low-income families are concentrated. The primary aim of the program is to help broaden and strengthen education for educationally deprived children.

The U.S. Commissioner of Education is responsible for the overall conduct of the Title I program at the national level and for determining the maximum amount of grants to be allocated to eligible districts or counties as well as State Educational Agencies (SEA) that operate or support schools for handicapped children. The SEA, in its formal application to the Commissioner for participation in the Title I program, includes assurances that it will

administer the program and submit reports in accordance with the provisions of the law and the regulations.

LEAs are responsible for developing and implementing projects to fulfill the intent of the Title I program. This responsibility entails (1) identifying educationally deprived children in areas where there are high concentrations of low-income families, (2) determining the special needs of the children, (3) designing projects to carry out the purposes of the legislation with regard to such children, and (4) submitting applications to the SEA for grants to carry out proposed projects.

Federal funds allocated to Pennsylvania under Title I in fiscal years 1968 through 1973 amounted to about $365,619,000.

SCOPE OF REVIEW

We examined SEA policies and procedures in effect for administration of the Title I program. Our review was directed toward an examination of the methods used for planning, approving and implementing Title I projects, and for controlling grant funds in conformance with the Act, Federal regulations, and Office of Education (OE) guidelines. We also examined pertinent records, held discussions with State and local agency officials, and visited selected school districts through out the State.

In addition, we compared actual operating practices and policies with the procedures and policies incorporated in the application for funds submitted by the SEA, Federal regulations, and other generally accepted management criteria. Our examinations were performed at the SEA and in the Philadelphia, Pittsburgh, Harrisburg, Chester, Scranton, McKeesport, Albert Gallatin, Connellsville, Allentown, Reading and Erie LEAs.

HIGHLIGHTS OF AUDIT RESULTS

The Title I program implemented by the SEA in fiscal years 1968 through 1973 at a cost of over $365 million had a measurable impact on the education of children

from low-income families within the State. Additional analysis and in-depth reviews, by the SEA, emphasizing project implementation and target school selection are needed, however, to assure that project proposals submitted by LEAs fully meet the requirements of the Act and are in accord with the law and the Federal regulations. In our review of projects proposed and implemented by 11 LEAs, we identified activities involving the expenditure of about $10.9 million of Title I funds that, in our opinion, did not fully meet basic requirements.

1. The effectiveness of the program to meet the most pressing special educational needs of educationally deprived children was limited in some LEAs because of the design by LEAs, and approval by the SEA of activities costing about $9.2 million that provided general aid to target area schools or provided services which were not identified with the special needs of educationally deprived children. These activities, while for worthy purposes, did not meet the intent of Title I legislation to concentrate supplemental compensatory education benefits on educationally deprived children.

2. Further, Title I funds totaling more than $1.7 million were spent in fiscal years 1968 through 1973 at non-target schools. The attendance areas served by these schools did not meet OE guidelines for eligibility for Title I funds because the concentration of children from low-income families in the attendance areas was less than the concentration of such children for the district as a whole. The expenditure of Title I funds at these schools continued because the SEA did not perform an adequate analysis of information included in the LEA project application prior to approval.

To prevent the use of Title I funds for other than the intended purposes and to accomplish the primary objective of correcting the educational deficiencies of economi-

cally deprived children, the need for tighter control over LEA operations is indicated. More in-depth review and analysis of submitted proposals together with closer surveillance of LEA day-to-day operations, in our opinion, will assure that program objectives are met and that operations fully meet regulatory requirements.

Also, the SEA needs to emphasize the periodic, objective measurement of the effectiveness of Title I projects in meeting the special educational needs of educationally deprived children. Adequate data were not always developed or used to: (1) assess project effectiveness, (2) revise projects not proving successful in meeting established needs, and (3) identify activities accomplishing the desired goals.

By letter dated June 28, 1974, the SEA submitted a written response to a draft of this report. The text of the reply is included in this report as Appendix I. We have summarized the position of the State Agency on the major points included in the report. The summaries, and our views thereon, are presented at the end of each section of the report.

Although the SEA disagreed with most of our conclusions and recommendations, our review and analysis of the information submitted with the SEA's reply did not disclose any additional data of sufficient significance to warrant a change in our original conclusions or recommended refunds.

Therefore, this report includes specific recommendations that, if implemented, should substantially improve the overall operation of the Title I program. This report also includes recommendations for refund to the Federal Government of certain Title I expenditures that, in our opinion, were not made in accordance with Federal requirements.

IMPROVEMENTS NEEDED IN SEA's ADMINISTRATION OF PROGRAM

Review and approval of project proposals is one of the SEA's most important responsibilities. The SEA is responsible for assuring that project proposals submitted by LEAs meet the requirements of the Act and are, in other respects, in accord with the law and Federal regulations. If the SEA cannot assure that a project meets these requirements, the proposal should be revised and resubmitted or disapproved. OE guidelines provide that Federal funds should not be advanced to an LEA until the project proposal has been received by the SEA in substantially approvable form.

The SEA, to meet its responsibility for the review and approval of project proposals, delegated the responsibility for administering grants under the Title I program to the Bureau of Planning and Evaluation. Within the Bureau, the Division of Compensatory Programs was responsible for the review of project applications. Project applications were submitted to business specialists in the Division for review of the budgetary aspects of the application. After budgetary reviews were completed, the applications were forwarded to one of the seven curriculum specialists who had responsibility for final review and approval of all Title I project applications. A checklist developed by the SEA was used to assure that the major aspects of the project application were reviewed prior to approval.

A review of project applications approved by the SEA showed, however, that reviews performed were not of sufficient depth to assure that program funds were expended in accordance with Title I regulations and guidelines. We noted instances where on the basis of the information included in applications submitted by LEAs, there were major questions as to whether the activities proposed were adequately designed to meet the special educational needs of educationally deprived children. Further, although in some instances SEA reviewers had

raised questions concerning the activities, the proposals were approved as proposed and the LEAs instructed to discontinue the activity the following year rather than disapproving the proposal and requiring immediate revision. Moreover, in many instances where LEAs were advised to discontinue the activity the following year, the LEAs continued to propose, and the SEA to approve, the continuation of the activity.

The following schedule identifies by LEA the amount of Title I funds that was spent on activities at schools that did not qualify to receive Title I funds or to support entire school systems rather than meet the specific identifiable needs of educationally deprived children.

PROGRAMS IMPLEMENTED PROVIDED GENERAL AID

Title I regulations state that each project must be tailored to contribute particularly toward meeting one or more of the special educational needs of educationally deprived children and should not be designed merely to meet the needs of schools or the student body at large in a school or in a specified grade in a school. The regulations state (1) that each project should be designed to meet the special educational needs of those educationally deprived children who have the greatest need for assistance and (2) Title I funds will not be used to provide to children in project area schools the same instructional or auxiliary services that are provided with State and local funds to children in non-project area schools.

We identified 14 projects involving the expenditure of over $9.2 million in Title I funds at 5 LEAs that in our opinion were not in accordance with Title I regulations. These projects as approved and implemented were providing general aid to the LEAs and were not meeting the specific needs of educationally deprived children, since the projects were designed to meet the needs of the student body at large in a school or in a specified grade in a school. In most cases, the LEA Title I application indi-

cated that the projects were providing general aid. However, the SEA approved the projects without requiring further documentation from the LEA to substantiate that the projects would meet a specific educational need of educationally deprived children. The SEA did not, for example, require LEAs to determine and submit with their project proposals, as required by program regulations, the specific educational needs of the children in order of priority. Also, in some instances, even though reviewers raised questions concerning the project, positive action was not taken to disapprove or return the proposal to the LEAs for revision. The projects which in our opinion were providing general aid are described in Exhibit A.

State Agency Comments

In a letter dated June 28, 1974, the SEA did not agree that the conditions reported in this section of the report supported the conclusions that Title I funds were used to provide general aid. The SEA also submitted letters from the individual LEAs which also did not agree with our conclusions. The SEA comments and our views thereon, are presented below. The SEA comments are included in Appendix I.

In the SEA's opinion, the "errors of the auditors" can be characterized as follows:

a) Failure to differentiate screening from actual program participation.

b) Failure to note differences in program content and intensiveness between Title I programs and other LEA programs.

c) Insistence that serving all children in a district or school is "general aid" despite the fact that all or nearly all were economically and educationally disadvantaged. This has special significance in attacking cultural

deprivation (Section 116.1(i) of Federal Regulations).

d) Failure to consistently indicate that in cases of alleged general aid of a "cultural education" nature, that districts were spending most of their Title I money on reading, math, etc. for eligible students. The draft report makes little or no mention of this, leaving the reader with the impression that art, music, physical education and libraries are the only items being funded by Title I.

In our opinion, screening is an essential part of any Title I program if the needs of educationally deprived children are to be identified and projects are to be designed to meet these needs. However, the projects identified by us in Exhibit A, as being general aid, were serving all children. No screening was done to determine those children who needed a particular service to reduce or eliminate their educational deprivation. If screening had been performed and services limited to those children most in need, many of the projects would have met the Title I guidelines.

During our review we interviewed project directors, Title I and locally funded teachers, Title I and locally funded aides and school principals. We also reviewed job descriptions for Title I and locally funded positions. We did not find any instances where the projects listed in Exhibit A were any different or more intense than similar LEA programs. We have provided more detail in our comments to the individual LEA responses in Exhibit A.

We agree that in some instances all or nearly all the children in a given school could be economically and educationally disadvantaged. However, Title I Regulations state:

> . . . but the project area must be sufficiently restricted in size in relation to the nature of the project as to avoid jeopardizing its effectiveness in meeting the aims and objectives of the project.
>
> . . . Each such project must be tailored to contribute particularly toward meeting one or more of the special educational needs of educationally deprived children and should not be designed merely to meet the needs of schools or of the student body at large in a school or in a specified grade in a school.

Furthermore, OE guidelines state that: "The Title I program, if it is to have sufficient size, scope, and quality to give reasonable promise of substantial progress as required by the Act, must be concentrated on a limited number of children." In our opinion, the projects described in Exhibit A were not in accordance with the above regulations and guidelines and therefore should not have been funded by Title I.

We agree that districts were spending most of their Title I funds on reading, math, etc. Title I has had a measurable impact on the children from low-income families within the State. Also, we have indicated in most cases the total Title I funds expended by each LEA compared to the amount expended on general aid type projects.

The SEA reply also stated that:

> The audit report indicates that "In most cases, the LEA Title I application indicated that the projects were providing general aid." The SEA states without equivocation that in no instance was a project knowingly approved which indicated that general aid was being provided.
>
> The SEA disagreed with our statement that in some instances, even though reviewers raised questions

concerning the project, positive action was not taken to disapprove or return the proposal to the LEAs for revision. The SEA replied that the statement is an unwarranted generalization not supported by specific information and further contends that there is no such supporting information.

It was our opinion that the SEA should have taken timely action to assure that projects were not providing general aid. For example, in October 1971 an SEA official wrote to an LEA questioning whether proposed programs supplanted the regular program or provided general aid. The LEA did not respond and the projects were approved in 1972 and 1973 without any further follow-up by the SEA.

In another case an SEA evaluation criticized a Title I program because it could not be distinguished from the regular LEA program. However, the LEA continued to propose the same projects and the SEA approved them without any additional follow-up.

In our opinion if the SEA had made additional follow-up in the cases noted, these projects would not have been approved Title I projects since we found that they were providing general aid to the LEAs.

The SEA disagreed with our statement that LEAs were not required to submit needs of children, since the SEA had issued guidelines which stated that the needs of children should be included in the LEA Title I application.

We agree that the SEA issued instructions concerning the needs of children. However, most of the applications reviewed by us did not contain a list of needs of children in a priority order. These applications were approved as submitted and the LEAs concerned were not required to submit a list of needs.

Conclusions and Recommendations

Owing partly to special interest group pressure and partly to a human desire to do something for as many children as possible, many LEAs tend to spread their limited funds over very large groups and develop general aid projects long desired but not a priority within limited State and local budgets. Consequently, while spent for entirely worthy purposes, funds are dissipated on laudable but inconclusive efforts. If the Title I program is to have a genuine impact of the special educational needs of educationally deprived children, the SEA must require concentration of supplemental compensatory benefits on the most pressing needs of limited and specific groups of children.

Since significant effort is required to assure that programs are effective and in accordance with regulatory requirements, the SEA must develop management techniques and procedures to provide the necessary assurances for compliance with such requirements. Because of the nature or type of activity proposed, isolating those projects that need additional review and further analysis would be a valuable aid in evaluating LEA operations.

We therefore recommend that:

(1) The SEA develop and implement procedures for more in-depth review and analysis of project proposals. These procedures would, as a minimum, provide for additional emphasis on those projects that appear to be designed to meet the needs of a school or the student body at large or entire classes in a school.

(2) The SEA require LEAs to immediately revise projects that reviewers identify as containing activities not in accordance with program criteria, and establish appropriate follow-up procedures to assure that necessary revisions are made in a timely manner.

(3) The SEA discontinue the approval of LEA proposals that provide for the use of Title I funds for teacher aides, library aides, and other aides, unless it is demonstrated that duties to be performed are appropriately related to the special educational needs of educationally deprived children.

(4) The SEA require the LEAs to discontinue or revise those projects identified in this report as not being in accordance with basic program requirements as follows:

a) The library assistants, art specialist teachers, teacher aides, kindergarten aides, and counselor aides in the Philadelphia LEA.

b) The outdoor education program conducted by the Harrisburg LEA.

c) The learning resources cooperative program conducted by the Scranton LEA.

d) The art, music, physical education and library programs conducted by the Albert Gallatin Area LEA.

e) The curriculum coordinators, library services and clerical personnel programs in the McKeesport LEA.

(5) OE require the SEA to return to the Federal Government Title I funds identified in this report as improperly spent as follows:

a) $2,556,788 for library assistants expended by the Philadelphia LEA.

b) $353,990 for counselor aides expended by the Philadelphia LEA.

c) $310,770 for art, music, physical education and library programs expended by the Albert Gallatin Area LEA.

d) $341,711 expended by the McKeesport LEA for curriculum coordinators, librarians and library aides and clerical personnel.

NEED FOR IMPROVEMENT IN METHODS USED TO EVALUATE SELECTION OF TARGET SCHOOLS

In fiscal years 1968 through 1971 the SEA approved Title I expenditures of more than $1.7 million by 4 LEAs for use at non-target schools. The SEA continued to approve expenditures at non-target schools during fiscal year 1972 and 1973 even though we brought this matter to their attention in an audit report issued April 14, 1969. OE also brought this matter to the SEA's attention during a review of the SEA's Title I program in January 1971. The expenditure of Title I funds at non-target schools continued because the SEA did not analyze information included in the project application prior to approval nor did the SEA monitor the expenditure of Title I funds to ensure that they were spent to benefit Title I schools and children.

Program Requirements

In keeping with the concept that a correlation exists between the educationally deprived and the economically disadvantaged, Title I regulations state that a school attendance area will be eligible to participate in the program if it has a concentration of children from low-income families equal to or greater than the average concentration of such children for the LEA as a whole. A school attendance area is eligible to participate either if the percentage of children from low-income families in the area is equal to the percentage for the entire LEA or if the number of children from low-income families in the area is equal to the numerical average of such children in the LEA.

Each LEA is responsible to obtain data to identify low-income families in school attendance areas within an

LEA's jurisdiction. The source data considered acceptable by OE are records on payments of aid to families with dependent children under Title IV of the Social Security Act and other welfare data, health statistics, and data from school surveys containing information on or related to family income. Also, the source data used for determining the number of children from low-income families in an LEA is required to be shown in the application, and made a part of each LEA's official Title I records.

SEA implementing procedures required LEAs to list on the project application all schools where Title I activities were to be conducted, the total number of children enrolled in each school, and the number and percentage of children from low-income families residing in each attendance area. LEAs were also required to rank each attendance area according to the concentration of children from low-income families. The SEA also established an eight percent variance factor for determining if entire school districts could be designated as an eligible attendance area. If concentrations of children from low-income families among the attendance areas varied more than eight percent the entire district could not be designated eligible.

Proposals Included Many Ineligible Schools

Project proposals submitted by 24 LEAs for fiscal years 1968 through 1971 showed that 15 of the LEAs proposed and received SEA approval to designate as eligible and conduct Title I activities in 409 schools that did not meet established selection criteria. SEA approval was given even though information included in the project application showed the schools selected had concentrations of children from low-income families below the district wide average. The following tabulation summarizes the results of our review of the proposals.

Fiscal Year	LEAs Listing Ineligible Schools	Total Number of Schools Listed	Number of Ineligible Schools	Total Title I Funds Received By the LEAs
1968	7	340	50	$16.6
1969	11	400	97	17.6
1970	14	432	169	23.5
1971	14	422	93	26.7
TOTAL	46	1,594	409*	$84.4 million

* This figure does not represent 409 different schools, since some of the same schools are repeated each year.

There was sufficient information included in the project applications to detect that the LEAs had designated ineligible schools as target schools. However, in none of the above instances did the SEA disapprove the selections or otherwise question the LEA relative to the basis used to include schools. The following examples illustrate the type of information in the proposal which should have alerted the SEA of the need to require revision in the project as submitted.

(1) The McKeesport LEA proposed to implement the Title I program in 22 elementary and secondary schools during fiscal year 1969. According to the project application, 14 of the schools served attendance areas with percentages of children from low-income families below the district-wide average of 11.7 percent. One of the schools served an attendance area where only 2 of the 235 children or less than 1 percent were from low-income families. Again in fiscal year 1970, the LEA designated 22 schools as eligible to participate in the Title I program. Thirteen of the designated schools served attendance areas which had lower percentages of children from low-income families than the district-wide average of 14.6 percent. In one attendance area where 105 children resided, only 3 or 2.85 percent of the children were from low-income families. In fiscal year 1971 the LEA designated 19 schools as eligible to partici-

pate in the Title I program, when in fact, ten of the schools served attendance areas which had lower percentages of eligible children than the district-wide average of 14.8 percent of children from low-income families.

(2) The district-wide percentage of children from low-income families was 14.5 percent at the Wyoming Valley West LEA in 1970. The LEA proposed to implement the Title I program in 27 schools during 1970. Ten of the designated schools served attendance areas with percentages of children from low-income families below the district-wide average. One of the schools served an attendance area where only 5 of the 276 children or 1.8 percent were from low-income families. Again in 1971, 27 schools were designated as eligible for Title I programs. Twelve of the schools served attendance areas which had percentages of children below the district-wide average of 17 percent. One of the attendance areas had 241 resident school age children of which only 3 children or 1.2 percent were from low-income families.

(3) The Hazelton LEA designated the entire school district as one target area in the 1971 project application and proposed to implement Title I programs in 29 elementary and secondary schools. Information contained on the application showed that the percentage of children from low-income families residing in the attendance areas served by the 29 schools ranged from 5.5 to 31.6 percent. Since Federal regulations require that, in order for an LEA to designate all schools as part of the target area, there should be no wide variance in the percentage of children from low-income families in each attendance area, the Hazelton LEA could not qualify as one target area. Using the district-wide average of 13 percent as shown on the application,

16 of the 29 schools listed were not eligible to participate in Title I activities because the areas had concentrations of children from low-income families below the district-wide average.

Expenditures at Non-Target Schools

We were unable to determine from available records at the SEA, the amount of Title I funds expended at ineligible schools by the 15 LEAs. We therefore visited three of the 15 LEAs to determine the amount of Title I funds spent at the ineligible schools. We were also unable to readily determine at the LEAs the total amount of funds expended at ineligible schools because expenditure records did not show cost for each school. However, we did identify expenditures totaling $1,477,297 by the Pittsburgh LEA, and $163,000 by the Philadelphia LEA. Further, on the basis of our examination at these LEAs, it was apparent that in addition to those expenditures which we identified, substantial amounts of Title I funds were spent at the ineligible schools. The detail results of our examination at each of the LEAs are presented below.

PITTSBURGH

During fiscal years 1968 to 1971, the Pittsburgh LEA designated a total of 286 schools as eligible to participate in the Title I program. The number of schools designated ranged from 67 schools in fiscal year 1970 to 76 schools in fiscal year 1968. Our comparison of the concentration of children from low-income families with the district-wide average of such children showed that of the 286 total schools, 124 had concentrations of children from low-income families below the district-wide average and were therefore not eligible Title I schools. A summary of the ineligible schools by year is presented in Exhibit B.

Cost data provided by the LEA showed that over $1.4 million of Title I funds were expended in the ineligible schools during fiscal years 1970 and 1971. Cost data was not available for fiscal years 1968 and 1969. However, on the basis of the amount of Title I funds allocated to the Pittsburgh LEA in fiscal years 1968 and 1969 and the percentage of ineligible schools to total schools, an additional $3.3 million of Title I funds may have been expended in the ineligible schools during fiscal years 1968 and 1969.

During our review at the Pittsburgh LEA we were unable to specifically determine why the above schools were selected as target schools. Personnel responsible for selecting schools for participation during fiscal years 1968 through 1971 were no longer employed by the LEA and current officials were unable to explain why the schools were selected. There were no records or other documentation available which provided any indications as to why schools with concentrations of children below the district-wide average of such children were selected.

PHILADELPHIA

Of the total 707 schools designated by the Philadelphia LEA as eligible to participate in the Title I program, the percentages of children from low-income families in 72 schools were below the district-wide average during fiscal years 1968 to 1971. Even though information included in the project applications for these years showed that these schools did not meet established program eligibility criteria, the LEA's proposal was approved to implement the Title I program in these schools. A summary of the ineligible schools by year is shown in Exhibit C.

Records were not available at the LEA showing the actual amount of Title I funds expended at each of

the ineligible schools. However, we noted that the LEA had budgeted over $1.7 million of Title I funds for the ineligible schools listed on the fiscal year 1971 applications. A limited review of personnel records indicated that as of December 1970, 40 aides and teachers whose annual salaries amounted to about $163,000 were assigned to the Title I Kindergarten, New Staffing Patterns, and Art Specialist Programs at the 14 ineligible schools listed on the 1971 project application. Review of the payroll distribution report on June 11, 1971 showed that Title I funds were used to pay the salaries of 31 teachers and aides at the 14 ineligible schools.

In discussing rationale used in selecting target schools, a responsible LEA official informed us that in prior years selection of target schools was based on information compiled by the Philadelphia Anti-Poverty programs. The Program established "pockets of poverty" throughout the City. In determining these "pockets" data on income, minority groups, social factors, etc., were analyzed. Instead of computing the percentage of children from low-income families for each attendance area in determining schools eligible to participate in the Title I project as required by regulation, the LEA considered the schools located in these "pockets of poverty" as target areas. As shown by our review, however, many of the schools located in these geographical areas had a concentration of children from low-income families below the district-wide average and should not have been designated as target schools.

Also, the LEA had budgeted over $600,000 of Title I funds during fiscal years 1970 and 1971 for 62 schools that had not been designated by the LEA as eligible for participation in the Title I program on the project application approved by the SEA. We were unable to determine the total amount of Title I

funds actually expended in these schools during the two year period. However, a limited review of payroll records by the Comptroller's Office of the City of Philadelphia indicated that the LEA expended at least $152,278 of Title I funds during fiscal year 1971 for salaries of personnel assigned to schools that had not been designated by the LEA on the project application as eligible to participate in the Title I program. At the time of our review no disposition of the $152,278 had been made.

Continuing Weaknesses In SEA Review Procedures

In our prior audit report dated April 14, 1969 on the administration of the Title I program, we reported that the State Agency had approved project applications submitted by LEAs even though information contained in the application showed that Title I programs were being proposed for implementation in schools that did not meet the established eligibility requirements. Weaknesses in State Agency review procedures were cited as the cause and recommendations were made to the State Agency to establish the necessary controls for screening out those applications not meeting the eligibility requirements.

In January 1971, personnel from the U.S. Office of Education conducted a review of the SEA's Title I program. The OE review concluded that, in order to insure that the Pennsylvania Title I program is brought into compliance with requirements as soon as possible, the SEA should, among other things, take steps to approve only those Title I project applications which meet legal requirements, especially in terms of proper identification of attendance areas to assure that Title I services were implemented in the proper schools.

SEA officials, in response to our previous audit report and the OE review, agreed that applications containing ineligible schools had been approved. Action taken by the SEA since these two reviews included developing and issuing a directive to all LEAs regarding the acceptable

method of selecting target schools. The directive was dated August 18, 1971 and required LEAs to identify the method used to select schools included in the fiscal year 1972 project applications. SEA project reviewers were provided copies of the directive and also participated in workshops with LEAs relative to school selection.

In discussing our current review, SEA officials again agreed that projects had been approved that showed schools were selected that had concentrations of children from low-income families below the district-wide average. These officials stated, however, that in their opinion action taken was sufficient to correct the situation and that fiscal year 1972 and 1973 applications would not include ineligible schools or would be detected by SEA reviewers and returned for revision.

Our examination of fiscal year 1972 and 1973 applications, and other related information, indicated that the State Agency's action was not completely effective. We noted, for example, that in 19 of the 22 fiscal year 1972 applications we previously reviewed no questions were raised concerning the eligibility of schools proposed for Title I participation. Based on the information available in the 1972 applications we were of the opinion that at least five of these applications should have been questioned or disapproved. We reviewed 21 fiscal year 1973 applications for LEAs granted $300,000 or more. Based on information available in the applications we noted that 31 ineligible schools out of a total of 71 schools were designated as target schools by three LEAs. In our opinion these schools should have been declared ineligible based on the information available to the SEA. The following examples illustrate the type of information included that indicated the need for additional information prior to the approval of the fiscal year 1972 and 1973 applications.

1. The McKeesport LEA indicated that the entire district qualified as one target area in fiscal year 1972 and 1973. However, the percentages of children

from low-income families residing in the school attendance areas listed on the application ranged from 8.5 to 33.9 percent in fiscal year 1972 and from 2.29 to 27.6 percent in fiscal year 1973. Federal regulations provide that, to qualify an entire school district as a target area, there should be no wide variance in the percentage of children from low-income families in each attendance area. In 1972, the State Agency established criteria which stated that, in order for a school district to designate all schools as part of the target area, the percentage of children from low-income families in each school should not vary by more than 8 percent from the district-wide average. The McKeesport LEA was not eligible to use this method. We found no evidence in the files available for our review to indicate that the State Agency reviewer had checked the eligibility of each attendance area or had questioned the designation of the entire district as a target area prior to approval of the application. In applying the percentage method of determining eligibility of schools to participate in the Title I program, eight of the designated schools in fiscal year 1972 and 16 of the designated schools in fiscal year 1973 served attendance areas where the percentage of children from low-income families was below the district-wide average and were therefore not eligible for participation in the program.

We visited the McKeesport LEA and were informed by LEA officials that the entire district was considered a target area because of the desegregation plan implemented by the LEA. Our review showed that the LEA was providing instructional leaders, principals and a library aide which benefited all children in the non-target schools. A total of $50,815 in Title I funds was expended for principals and the library aide in the ineligible schools during fiscal years 1972 and 1973. (See Exhibit D)

2. The Allentown LEA indicated on its fiscal year 1972 and 1973 applications that 15 schools were ineligible to participate in Title I services. However, the LEA requested approval to provide reading services to 15 children in each of the ineligible schools since these children resided in target areas but were bussed to non-target schools to achieve desegregation. The SEA approved the request but limited the services to only those children who resided in target area.

   We visited the Allentown LEA and reviewed the reading program conducted in the non-target schools. Only 34 of the 236 students bussed to non-target schools participated in the program. These 34 students represented 11.26 percent of the total enrollment in the Title I reading program at non-target schools. Title I funds totaling $51,429 were expended during fiscal year 1973 to provide services to 302 children of which only 34 were eligible to receive such services. (See Exhibit E)

3. The Armstrong LEA, as in prior years, did not identify the number of children from low-income families for each attendance area. Instead, the schools were grouped by geographic area and a percentage of children from low-income families residing in each of the geographic areas was computed. On the basis of these percentages, the LEA considered the entire school district as a single target area. We found no evidence in the files available for our review to indicate that the SEA reviewer had determined that each of the school attendance areas was in fact eligible to participate in the program. We do not believe that the SEA could have made a valid determination that the entire school district qualified as a single target area without ascertaining the number of low-income family children of school age residing in each of the attendance areas.

4. Three LEAs indicated that the entire school district qualified as a single target area in 1972, even though in 1971 the variances in the percentage of children from low-income families residing in the attendance areas served by the schools proposed for participation in the Title I program were significantly greater than the 8 percent maximum established by the SEA for qualifying an entire district as eligible during 1972. The percentage range of children from low-income families residing in the attendance areas listed on the 1971 application for the Bentworth LEA was 10.7 percent to 40.7 percent, and for Albert Gallatin, 28.9 to 53.9 percent. In our opinion, had an adequate review been made, giving consideration to all information available to the SEA, including the prior year's applications, the 1972 applications would not have been approved unless the LEAs were able to provide adequate justification as to how the high variance of children from low-income families among the attendance areas in 1971 was reduced to less than 8 percent in 1972. We found no evidence that the SEA required the LEAs to submit any explanation or justification along this line prior to approval of the 1972 applications.

We discussed the above examples with SEA officials and they agreed that Title I funds were still being approved and expended in ineligible schools. They attributed the approval to inadequacies in the SEA review and monitoring processes.

State Agency Comments

The State Agency commented on the section *Continuing Weaknesses in SEA Review Procedures*:

> "We question statements about desegregation and eligible schools. During the period of time covered by this audit, certain school districts were under

court orders concerning the State Human Relations Commission's decision to desegregate their schools. Consequently, in an effort for the Title I program . . . to have a positive effect on their desegregation program and primarily because of the dispersal of minority group children throughout the district, the Title I office in effect recognized these districts as being able to declare the entire school district as an eligible attendance area."

ESEA Title I Program Guide Number 64 entitled "The Administration of Title I of the Elementary and Secondary Education Act in Districts That Have Undergone Desegregation" states:

> Wherever definite attendance areas or zones have been established, whether through a desegration plan or otherwise, Title I services are to be offered only to children who live in those areas or zones which have at least average or higher than average concentrations of children from low-income families (see Title I Regulations, Section 116.17). Each local educational agency that has undergone desegregation must, therefore, in planning its Title I program for fiscal year 1972 determine which of its attendance areas are eligible for Title I projects. If there are no well defined attendance areas, the local educational agency should redetermine which of its schools are ineligible for Title I projects on the basis that the incidence of children from low-income families in those schools is as high or higher than the average incidence for all schools in the district.
>
> In districts with no wide variations in the concentrations of children from low-income families, a whole school district or a group of contiguous school attendance areas may be regarded as a single area of high concentration. Such determinations should, of course, be limited to those school districts where the variation between the areas of highest and low-

est concentration is significantly less than the average variation for the State. In each such case the local educational agency must make a special effort to ensure that Title I services are concentrated sufficiently on a limited number of children to insure an effective program.

The LEAs cited in this report as having Title I programs in ineligible schools had wide variations in the concentrations of children from low-income families. Therefore, they were not eligible to regard the whole school district as a target area. The SEA policy of allowing LEAs under a desegregation order to declare the entire school district as an eligible attendance area is not in accordance with Program Guide Number 64 and should be discontinued.

LEA Comments

Individual LEA comments were provided through endorsement by the SEA of letters written by the LEAs. The letters were submitted as exhibits to the formal SEA reply. Presented below are the comments of the LEAs along with our comments.

PHILADELPHIA

The LEA agreed that target schools were selected based on "pockets of poverty" along with other data on income. The LEA also stated: "However, it must be *stressed* that the School District of Philadelphia did not have any additional annual, hard data on the concentration of children from low-income families, school by school, available to update the list of Title I eligible schools. As a result, it was impossible to justify to parents, community members, and school staffs the elimination of services from schools which did not have a percentage equal to or greater than the district-wide average.

It must also be emphasized that the School District petitioned the State and County Board of Assistance for information on the addresses of families of children from low-income families that could be used to accurately revise the list of Title I eligible schools. However, this information was not obtained until 1972. Consequently, for the period 1967-71 cited in the report, there was no objective basis on which to exclude schools from the Title I Program and deprive children of services sorely needed."

We agree that additional annual hard data may not have been available. However, OE guidelines state that the attendance areas selected for Title I projects are those areas which on the basis of the best available information have high concentrations of children from low-income families. By regulation, the attendance areas with high concentrations of children from low-income families are those areas where the concentration of such children is as high or higher than the average concentration for the district as a whole.

The LEA used the best available data uniformly throughout the district and should have only designated those schools with a concentration of children from low-income families as high or higher than the district-wide average of such children. We do not believe that schools should be designated as target schools because of the pressure of parents, community members, and school staff. If Title I funds are to benefit the children from low-income families they must be concentrated in the schools having the largest percentages of such children as required by the regulations.

PITTSBURGH

The LEA stated that they did not make a deliberate attempt to operate programs in schools that did not satisfy Title I regulations but there was a lack of documentation to justify the participation of the

schools listed on the applications. In addition, when accurate data became available and accountability could be validated, schools that had been participating in Title I programs during periods of inaccurate statistics were in fact eligible. Further the LEA stated there was a wide discrepancy of statistics between the 1967-68 and 1971-72 school years.

We agree that the statistics for low-income children varied from 1967-68 and 1971-72. In fact, the number of low-income children used by the SEA to allocate Title I funds to the LEA increased from 17,543 in 1967-68 to 32,116 in 1971-72. This increase can account for schools being eligible in 1971-72 that were not eligible in 1967-68.

Our main point was that the SEA was approving Title I applications that listed ineligible schools based on the statistical data available and furnished by the LEA. In the LEA's 1971-72 Title I application, three ineligible schools were listed as eligible Title I schools. In 1971-72 the LEA claims to have had accurate data, however they were still listing ineligible schools on their application as well as conducting Title I programs in those schools. Therefore, we must conclude that Title I programs operated in ineligible schools from 1967-68 to 1971-72.

McKEESPORT

The school year 1969-70 was the first year of our desegregation plan. We were under the impression, and still are, that all schools involved in the integration plan become target schools. We still have no evidence to refute this belief.

Program Guide Number 64 which covers LEAs that have undergone desegregation provides that the LEA should determine which of its schools are eligible for Title I projects on the basis that the incidence of children from low-income families in those schools is as high or higher than the average incidence for all schools in the

district. Therefore, we are still of the opinion that the $50,815 of Title I funds mentioned in this report was spent in ineligible schools.

ALLENTOWN

> The LEA agreed that children in non-target schools were participating in a Title I reading program. The SEA was aware that children from ineligible schools were participating in the program since the program and participants were fully detailed in the Title I application approved by the SEA. Furthermore, the LEA has since revised its reading program conducted in ineligible schools during the 1973-74 school year to include only those children that were bussed in from eligible attendance areas.

We agree that the SEA approved the LEA's Title I program in ineligible schools. However, the LEA did not serve the children as outlined in the approved application. The application showed that 300 children would be served (225 bussed in from target areas and 75 children in the ineligible school). The program as conducted served 302 children (34 bussed from target areas and 268 children from the ineligible school). In fact one school had 34 children bussed in from target areas and not one was enrolled in the Title I reading program at that school. (See Exhibit E)

In our opinion Title I funds should have only been expended on children from target areas. Therefore Title I funds totaling $5,790 ($51,429÷302×34) was the only benefit received by children residing in target areas. Therefore, $45,639 ($51,429-5,790) was expended to serve ineligible children.

Conclusions and Recommendations

If the limited program funds available are to be utilized as intended by law, for assisting the educationally deprived children in areas where low-income families are

concentrated, the determination of those school attendance areas that are to participate in each LEA's program is one of the more important aspects of the Title I program. It is the State Agency's responsibility to review and monitor project applications and assure that only the highest concentrations of educationally deprived children benefit from the Title I program.

We therefore recommend that:

(1) The State Agency place additional emphasis on the review and evaluation of schools selected by LEAs in relation to established criteria.

(2) The State Agency establish procedures to continuously monitor Title I activities implemented by the LEAs to assure that programs are conducted at eligible schools only.

(3) OE consider obtaining an appropriate financial adjustment for Title I funds identified in this report as being expended at ineligible schools in Philadelphia, Pittsburgh, McKeesport and Allentown LEAs as follows:

Philadelphia	$ 163,000
Pittsburgh	1,477,297
McKeesport	50,815
Allentown	45,639
TOTAL	$1,736,751

(4) The SEA determine the disposition of $152,278 identified by the City Comptroller as being spent by the Philadelphia LEA in ineligible schools and make an appropriate refund to the Federal Government.

NEED FOR MORE MANAGEMENT EMPHASIS ON PROJECT EVALUATION

The resources provided through the Title I program, enabled the SEA to authorize projects by LEAs that pro-

vided new or additional services that would not have been available or made available only on a limited basis to educationally deprived children in the State. The SEA did not, however, require LEAs to fully comply with established Title I evaluation criteria. Adequate data were not always developed and used to assess project effectiveness or revise projects not proving successful in meeting identified needs as well as identifying activities accomplishing the desired goals. As a result, the SEA was not in a position to assess the overall impact of the $365 million of Title I funds awarded to the State during fiscal years 1968 to 1973.

Specifically:

(1) the SEA approved project proposals, contrary to established project approval criteria that did not clearly state education objectives or the type and extent of change expected, and

(2) evaluation reports submitted by LEAs were subjective and often expressed in general terms precluding meaningful assessment of program effectiveness.

Approved Projects Did Not Include Clearly Stated Education Objectives

Effective evaluation begins with project planning. Desired results must be determined and established with which actual accomplishments can be compared. Education objectives should be defined in specific units of output and reflect the most pressing needs of the educationally deprived children to be served.

To assure that it can be determined if Title I activities are accomplishing program objectives, OE Program Guide Number 44 governing approval of project proposals submitted by LEAs requires that to be an approvable project, the education objectives must be clearly

and realistically stated in terms of the types of changes sought and the degree of change expected by the end of the year. The SEA is required to determine that proposals include specific evaluation procedures consistent with project objectives. Unless the procedures are described to enable appraisal of potential effectiveness, the project should not be approved.

(3) Project review procedures performed by the SEA did not include a determination, prior to approval, that (1) the proposed activities could be evaluated or (2) the objectives to be met were clearly and realistically stated in terms of types and degrees of change expected. In the most part, activities proposed by LEAs were approved as submitted.

In our detailed examination of project proposals submitted by 42 LEAs for fiscal years 1971 to 1973 and subsequently approved by the SEA, we noted numerous instances where the proposals did not meet OE requirements. The proposals included general overall objectives without reference to types and degrees of change expected or baseline data to show that the extent of the deficiency. Many of the proposals included such overall objectives as "to instruct pupils" or "to improve the reading performance of all students within the district". They did not show how far behind the children were or the expected improvement at the end of the year. [(4) The SEA did not require the LEAs to identify and rank, on a priority basis, the needs of educationally deprived children. Project applications were approved that merely stated that the activity would meet a general need or needs of the children without reference to priorities. In some instances, the project application did not include any data relative to needs of the educationally deprived children.]

Evaluation Reports Did Not Include Objective Measurement Of Accomplishments

The Title I Act requires that effective procedures, including provision for appropriate objective measurements of educational achievement, will be adopted for evaluating at least annually the effectiveness of the programs in meeting the special educational needs of educationally deprived children. The implementing OE Title I guidelines state that, "The measurements of pupil changes and attainments in Title I projects must be more carefully assessed and controlled than casual teacher judgment." The meaning of these changes will in most cases, involve appropriate measurements before, during, and after the project and the differences observed, when compared with predetermined goals, will provide a basis for measuring project success. OE guidelines also place with the SEA the responsibility for synthesizing the results of the evaluation reports of all the projects and programs under its jurisdiction. The guidelines suggest the early grouping of approved projects and programs according to objectives, designs, and measuring instruments utilized to facilitate the assessment of the overall impact of Title I in the State.

(5) A detailed review of project evaluations performed by the SEA and LEAs showed that evaluations were not always performed annually, as required, and were often expressed in general terms with no objective measurements of project effectiveness or evidence that such measurements were attempted.] In some instances, there was no information in the project application to show how the effectiveness of the activity would be measured. In other instances, the methods for measuring effectiveness were stated in such general terms as: (1) diversified data accumulating techniques (unidentified); (2) student attitudes and performance; (3) instructor judgement; and (4) observation, with no reference to types and degrees of change expected. Further, project cost

data were not available or considered by the SEA prior to approval of the proposed projects or during the evaluation of completed projects. Consequently, meaningful assessments of program effectiveness both in terms of educational achievement and Title I expenditures were often not possible.

On-site evaluation reports

On-site evaluations were usually performed by per diem paid teachers and school administrators who had attended in-service training sessions conducted by the SEA's Division of Program Evaluation. The Division also prepared procedural guidelines for these evaluations. Prior to the on-site evaluations, LEAs were required to submit a self-evaluation report which was made available to the on-site team. The on-site evaluations were designed to show the strengths of the projects, special problems and weaknesses and recommendations. The evaluations emphasized the following areas: (1) general objectives; (2) calendar objectives; (3) in-service; (4) dissemination; (5) evaluation; (6) change impetus; and (7) community involvement.

On-site evaluations were available for 20 of the 42 LEA applications which we selected for review to determine if the methods for measuring project effectiveness had been clearly defined. These on-site evaluations showed that in only two cases did the evaluation team comment that the LEA had established effective procedures and techniques for evaluation of project effectiveness and accomplishments. In six of the 20 evaluations, a weakness or special problem identified was a lack of data to give evidence of success of activities. Recommendations were directed toward development of statistical data to enable evaluation of the projects. Most of the evaluations we reviewed presented generalities rather than specific details which precluded an overall assessment of the programs. Some examples of the types of comments included in the evaluations were:

. . . The emphasis on the social aspects of the program is by far the most outstanding.

. . . The human relations training program is outstanding and has filtered throughout the district in a positive fashion.

. . . It appears that the school district received a lot of dental services for the money spent.

. . . The use of aides is commendable.

. . . The program of remedial reading is well staffed, well organized, well administered, and provides superior service to the pupils it serves.

Self-evaluation reports

Self-evaluations performed by the LEAs prior to on-site evaluations were available at the SEA. Procedures had not been established by the SEA, however, to assure that the LEAs were performing annual self-evaluations of their programs as required by program regulations. Only through the on-site evaluations was the SEA able to determine if self-evaluations were performed. These self-evaluations covered the same areas as the on-site evaluation. The self-evaluations often dealt in generalities rather than specific measures of effectiveness.

In some cases, special self-evaluations were requested by the SEA and submitted by the LEAs. These reports were not standardized with respect to format or data presented and generally covered programs selected by the LEA for evaluation. Special self-evaluations were requested by the SEA from 29 LEAs and covered a total of 48 instructional activities, of which 24 were reading and related projects.

Our review showed that, while the special evaluations of about 50 percent of the activities included pre and post testing results, evaluations for only 30 percent showed that the testing results were analyzed and comparisons made in an attempt to measure the effective-

ness of the activities in improving the educational attainment of educationally deprived children. Further, the evaluations for the remaining 50 percent presented only generalized narratives with no pre and post testing results. Since specific measures of educational achievement were not shown, meaningful assessments of project effectiveness in meeting established program objectives were precluded.

Cost Data Not Available For Consideration in Evaluating Title I Projects

In addition to the lack of objective measures of project effectiveness as described above, the SEA did not require LEAs to maintain or report budget and expenditure data on individual projects. Instead, Title I funds were budgeted and accounted for by type of expense within the LEAs total program. It is our opinion that the estimated costs of proposed projects should be considered in conjunction with the expected results, prior to approval by the SEA, to assure that Title I funds are planned for expenditure in the most effective manner. Further, evaluations or project effectiveness would be enhanced when actual costs of the project are considered in conjunction with project accomplishments. Without project cost data, there is no assurance that the liimted amount of Title I funds available are being used in the most efficient and effective manner in meeting the special educational needs of educationally deprived children.

State Agency Comments

State Agency officials verbally recognized the weaknesses in evaluations of Title I programs and indicated that instruments to be used to evaluate projects need to be designed and applied in order to determine whether project objectives are met. They believe this to be a major problem because: (1) educators cannot agree on the best method for measuring project effectiveness;

(2) measurements of pupil changes and attainment are always being questioned; (3) many LEAs will not accept tests as a means for evaluation of an individual in a Title I project; and (4) local conditions, attitudes and group pressures have a profound effect on evaluation concepts. The Title I coordinator stated that standardization of evaluation data is needed before an atempt is made to perform an overall evaluation of the Title I program. With regard to project cost data, the Title I coordinator agreed that this data was needed, and stated that ten LEAs with the largest budgets were required to submit separate budgets for each project within their Title I program for fiscal year 1973.

In the written response the SEA disagreed with our statement that the SEA did not require the LEAs to identify and rank, on a priority basis, the needs of educationally deprived children since SEA guidelines required that identification and priority of needs be included in the Title I application.

We agree that SEA guidelines require the listing of the priority of identified needs of educationally deprived children. However, many of the applications reviewed did not contain specific identified needs listed in priority. Also there was no indication that SEA reviewers requested this information from the LEAs prior to approving the application. In our opinion this information should be included in the application before SEA approval of a Title I project.

The SEA had no other specific comments in this area.

Conclusions and Recommendations

Our examination showed that the SEA needed to emphasize the periodic, objective measurement of the effectiveness of the Title I program in meeting the special educational needs of educationally deprived children. Adequate data were not always developed or used to assess project effectiveness and discontinue or revise ac-

tivities not proving successful, as well as identifying those activities accomplishing the desired goals.

We therefore recommend that the SEA:

(1) Require LEAs to submit with their project application a sufficiently detailed description of the methods and procedures to be used to evaluate each major activity to enable appraisal of the potential effectiveness of the proposed projects prior to approval.

(2) Require LEAs to show the estimated cost of each project contained in the application and maintain and report Title I expenditures on the same basis.

(3) Require LEAs to perform annual evaluations of the effectiveness of their Title I programs in meeting the special educational needs of educationally deprived children, including appropriate objective measurements of educational achievement.

(4) Review and consider the results of the evaluations in terms of effectiveness and cost prior to approving future project applications.

STATUS OF PRIOR AUDIT FINDINGS

In April 1969, the DHEW Audit Agency issued an audit report on the SEA's administration of the Title I program for the period July 1, 1966 to August 31, 1967. The findings presented in that report included (1) weaknesses in financial reporting; (2) improper administration of letter-of-credit withdrawals and advances to the LEAs; (3) improper charges of $442,394 for costs not actually incurred, not substantiated or meeting the requirements of the Act; (4) inadequate audits of local expenditures; (5) ineligible schools participating in Title I programs; (6) weaknesses in budgetary controls; (7) incomplete evaluations of Title I programs; (8) incomplete or inadequate LEA equipment inventories; (9) lack of internal control in the payment procedures; and (10) lack of internal review.

For the most part, the State Agency took corrective action on the findings in the report. Our current audit, however, showed that the SEA had not sufficiently increased its overall review and analysis of project proposals to adequately assure that project proposals submitted by the LEAs fully met the requirements of the Act and were in accord with the law and Federal regulations. As previously reported, the SEA has continued to approve projects that included schools not eligible for participation in the Title I program. As a result, the number of ineligible schools approved by the SEA had increased substantially and the finding is repeated in this report.

EXHIBIT A

PROJECTS THAT WERE PROVIDING GENERAL AID

PHILADELPHIA LEA

The Philadelphia City LEA is the largest in the State and during fiscal year 1967 through 1971 was allocated about $57.3 million (27 percent) of the total $220 million of Title I funds provided to the State. The Title I program conducted after fiscal year 1971 is the subject of a separate HEW Audit Agency report; therefore our comments in this report are limited to fiscal years 1967 through 1971. During our examination we identified activities involving the expenditure of about $8 million of Title I funds that were not used to meet the specific educational needs of educationally deprived children. We identified Title I expenditures that did not meet program criteria of concentrating supplemental compensatory education benefits on educationally deprived children totaling (1) $2.6 million for library assistants, (2) $1.2 million for art teachers, (3) $2.8 million for teacher aides, (4) $1.4 million for kindergarten aides, and (5) $354,000 for counselor aides.

Library Assistants

Title I funds amounting to $2,556,788 were expended for the salaries of library assistants from fiscal year 1968 to 1971. Library assistants were also funded with Title I funds in fiscal years 1972 and 1973.

In fiscal year 1971, Title I funds were used to provide 120 library assistants and five supervisors to 181 schools in the Philadelphia School District. The duties performed by the library assistants, however, were not specifically related to special educational needs of educationally deprived children. Instead, the duties performed were routine clerical and mechanical tasks associated with the overall operation of the libraries. Library usage was in-

corporated into the regular school curriculum for students in kindergarten to high school, with weekly visits to the school library scheduled for all children.

As designed and implemented, this activity served the general needs of the schools and was not specifically related to identified educational needs of educationally deprived children. Furthermore, the LEA provides 99 library assistants with local funds and all schools in the LEA have library assistant services either through Title I or local funding.

Title I regulations section 116.17(a) and (h) provide that (1) projects should not be designed merely to meet the needs of schools or of the student body at large in a school or in a specified grade in a school and (2) Title I funds will not be used to provide instructional or auxiliary services to project area schools that are ordinarily provided with State and local funds to children in nonproject area schools. Therefore, the use of Title I funds to pay library assistants to perform routine functions necessary to the overall operation of the library is, in our opinion, a general aid type program not eligible as a Title I activity.

LEA Comments

In their written reply to our draft report the LEA stated that recent findings indicate that the library aides participate in a variety of tasks which are related to each school's Title I Reading Programs. They (1) order, organize and make available the books selected for use by individual classroom teachers, (2) provide groups of educationally deprived students with instructions in how to use the library, (3) record the names of books read by individual students and make this information available to classroom teachers, and (4) label Title I materials as they arrive and log this material in and out as it is used by students or teachers.

We agree that the library aides do benefit the Title I reading program the same as they benefit all the programs in a particular school. Also, the duties as described by the LEA above benefit all the children that use the library, not just educationally deprived children.

The LEA response did not, however, address the basic issue that library aides are provided with local funds in non-target schools. Nor did the LEA make mention of the fact that all schools in the district have library aides and that library usage is incorporated into the regular school program.

We do not believe that the library aide program as implemented by the LEA met the special supplementary provisions of the Act. Instead this program is merely providing a service to target schools that is provided to non-target schools with local funds.

Art Specialist Teachers

During fiscal years 1969 to 1971, the LEA has expended over $1.2 million of Title I funds to provide art specialist teachers to target schools. Art specialist teachers were also provided with Title I funds in fiscal years 1972 and 1973. As designed and implemented, however, the program was not specifically related to the special educational needs of educationally deprived children and therefore did not meet the supplemental requirement of the Act.

Art specialist teachers were assigned to a specific school. They devoted more time on the fourth, fifth and sixth graders and then rotated through the entire school. Furthermore, specific children were not identified, since the LEA felt that it would be harmful to segregate the children. This program as implemented was serving the entire classrooms and/or schools.

The LEA provided some art teachers to all schools with local funds. During fiscal year 1971, for example, the LEA provided 13.5 full time equivalent art teachers to 19 target area schools and 23.1 full time equivalent

art teachers to 26 non-target area schools with local funds. Title I funds were used to provide art teachers to 90 target schools, 26 non-public schools, and three non-target schools. The qualifications for employment were the same for the Title I and school district funded art teachers. Also, both teachers were instructed to follow the elementary art guides published by the school district.

In our opinion this program is not in accordance with Title I regulations section 116.17(g) and (h) cited in the section on library aides.

LEA Comments

The LEA did not address the issue raised in our report in its written response. The LEA did state that the services provided are not identical to the operating budget program. However, the job descriptions and art manual used by the art specialist teachers in target and non-target schools were identical. Furthermore, the reply indicated that the Title I program was mainly concentrated on children in grades 4, 5 and 6. The LEA did not mention how educationally deprived children were selected or that only educationally deprived children were served by the program.

We conclude that the art specialist program did not provide additional supplemental services to educationally deprived children. But, the program merely provided a service to all children in a particular target school that children in other target and non-target schools were receiving with local funds.

Teacher, Kindergarten And Counselor Aides

From fiscal years 1969 to 1971 over $2.7 million of Title I funds have been used for teacher aides. This activity was implemented at the inception of the Title I program. The project as approved, however,

was not sufficiently related to the special educational needs of educationally deprived children. Moreover, the LEA provided teacher aides to non-target schools with local funds. In fiscal year 1971 the LEA planned to provide 16.4 full time equivalent aides to project area schools and 19.5 full time equivalent aides to non-project area schools with local funds while Title I funds were used to provide 240 aides to project area schools. Officials at the LEA indicated that the duties of all aides were identical. The LEA also provided teacher aides with fiscal year 1972 and 1973 Title I funds.

The LEA has been providing kindergarten aides to project area schools with Title I funds since 1965. At the same time, the LEA has been providing kindergarten aides with local funds to non-project area schools. During fiscal year 1971 approximately 18 aides were provided with local funds to non-target schools while Title I funds were used to provide aides to selected target schools on a ratio of one aide to every two teachers.

From fiscal year 1969 to 1971 Title I funds amounting to almost $1.4 million have been expended for the services of the kindergarten aides. The aides performed auxiliary educational work providing supported services to kindergarten teachers under the direct supervision of the teachers. The duties and assignments of the aides were not designed to contribute particularly toward meeting one or more of special identified educational needs of educationally deprived children. Instead, the services provided by the aides benefitted all children on an equal basis in the class to which the aides were assigned.

Title I funds amounting to $353,990 have been expended for the services of counselor aides from fiscal year 1969 to 1971. The duties of the aides were to provide clerical and routine interviewing

services for counselors, answering general questions posed by students, parents, and past-graduates and routing these people to the appropriate counselor. They were responsible for serving as receptionists and for typing a variety of material involved with the counseling process. In our opinion, the duties of the counselor aides were not directly related to the special educational needs of educationally deprived children. Moreover, the LEA provided counselor aides to non-target area secondary schools with local operating funds. In fiscal year 1971 the LEA planned to use local funds to provide one counselor aide to a target school and nine aides to non-target area schools. Title I funds were used to provide counselor aides to 21 target secondary schools in 1971. Officials at the LEA indicated that the Title I aides and locally funded aides performed identical duties. During fiscal years 1972 and 1973 Title I funds were also used to provide counselor aides to target schools.

LEA Comments

In their reply the LEA contends that these three types of aides were providing special services to educationally deprived children and that these services were not the same as services being provided in non-target schools. In the case of teacher and kindergarten aides the LEA stated "Teacher with peak enrollment or with overcrowded classrooms need supportive assistance if they are to spend more time teaching and give more attention to individuals and small groups of pupils."

Further, the LEA stated "Recent evaluations indicate that counselor aides facilitated access to counseling services to a great extent in all cases by reducing the waiting time of clients to a median of two minutes. Their specific involve-

ment in the counseling process varied with the needs of the particular schools. However, a large part of their activity involved the giving of immediate and direct service to pupils, parents, teachers, social workers, and others who came into or telephoned the counseling office."

The LEA comments on the assignment utilization of Title I paid aides were not sufficiently directed to the issues involved. The LEA did not mention how the aides identified and met the specific needs of educationally deprived children. The comments, as stated in our report, indicated that the aides were benefiting entire classrooms or the student body at large in a school. Moreover, in the case of teacher and kindergarten aides, the comments indicate that the aides were necessary to reduce the pupil/teacher ratios because of overcrowded classrooms.

In our opinion the aides were benefiting an entire classroom or school, which is contrary to Title I regulations. Furthermore, we do not believe Title I was intended to relieve overcrowded conditions but instead Title I was intended to provide supplementary services to identified educationally deprived children.

HARRISBURG LEA

The Harrisburg LEA proposed and implemented an outdoor education program with Title I funds. The program was designed to provide a real-life setting for acquiring creative outdoor skills, for attaining concepts about human and natural resources, and for learning that man is dependent on his environment for his existence. Instead of being concentrated on a limited number of educationally deprived children and designed specifically to meet their identified needs, the LEA made this activity available to all children from kindergarten through fourth grade and the entire sixth grade. Records

were not available at the LEA to determine the amount of Title I funds actually expended on this program.

LEA Comments

> The LEA stated that the School District has documented the needs of its children by teacher observation, cumulative inventory gain folders and standardized test data to support the implementation of its Title I programs.

We agree that the LEA determined that outdoor education was a fourth priority need. Outdoor education was listed as a need for 2,651 children in December 1969. However, the program was used to benefit 6,414 children during the 1970/71 school year. Title I was intended to benefit identified educationally deprived children, not all the children in a grade or school.

The LEA agreed that the outdoor education activity served all children from kindergarten through fourth grade and the entire sixth grade. The LEA reply stated:

> "It is impossible to take only selected students from a classroom for full days at a time and not seriously damage the ongoing curriculum and create an emotional problem in those "left out" by loss of peer group learning values. Such a procedure creates the possibility that additional children will then develop a need for special services. Segregating children for short periods of time for special assistance is one thing, but for full days is another. Also the teacher is not part of the program because he/she is not actively involved. This, in turn, defeats any "spin-off potential".

Title I requires that programs be designed to meet the most pressing needs of educationally deprived children. In our opinion a program that can not be designed to meet the needs of only educationally deprived children should not be funded with Title I funds.

SCRANTON LEA

Title I funds totaling $292,115 have been expended by this LEA from fiscal years 1968 to 1971 to support a learning resources cooperative program. This program was continued by the LEA in fiscal years 1972 and 1973. Under the program, four paraprofessionals were employed to provide general library services to all children in four target and five non-target schools. The same type of general library services were provided to the non-target schools by seven library assistants paid with local funds. Furthermore, a summer library program was conducted to which all elementary school children in the district were invited to participate. (See Exhibit F)

The program also provided various types of non-print materials which were made available to all schools in the city. An analysis of schools utilizing non-print materials during the 1970-71 school year showed that target elementary schools used 30 percent, non-targeted elementary schools used 37 percent and secondary schools used 33 percent of the films loaned.

In our opinion the activities conducted under this program were serving all the children in a school and/or the entire school district contrary to Title I regulations. The Scranton LEA did not submit a reply to the draft report. Therefore, LEA comments are not included in this report.

ALBERT GALLATIN AREA

The Albert Gallatin Area School District received about $1.4 million in Title I funds for fiscal years 1971 through 1973. We identified $310,770 (22 percent) of the funds as being spent for general education type activities. Elementary Art, Music and Physical Education teachers were funded for $254,500 and Librarians and Library Aides were funded for $56,270. In our opinion

these programs served all children in the district and were not limited as required by Federal regulations to educationally deprived children.

Art, Music And Physical Education Teachers

The LEA funded elementary art, music and physical education teachers in fiscal years 1971 through 1973 as follows:

	1971	1972	1973	Total
Art	*(1) $ 6,800	(4) $25,700	(6) $ 41,000	$ 73,500
Music	(2) 12,700	(3) 19,800	(5) 36,600	69,100
Physical Ed.	(5) 37,900	(5) 34,000	(5) 40,000	111,900
Totals	$57,400	$79,500	$117,600	$254,500

* Denotes number of teachers.

We interviewed four teachers (two music, one art, and one physical education). The four teachers informed us that they gave instruction to all children in the school to which they were assigned. Each teacher stated that they did not attempt to identify educationally deprived children but considered all children within their assigned school as educationally deprived.

In our opinion, these projects were not approvable projects because they did not meet the Title I criteria of meeting the specific needs of identified educationally deprived children. Furthermore, the SEA reviewers continued to approve these projects, even after the LEA was requested to support the fact that the projects were not supplanting State and local funds or general aid, but failed to do so.

Librarians And Library Aides

In fiscal years 1971 through 1973 the SEA approved projects providing for the expenditure of Title I funds amounting to about $56,270. The LEA used these funds to employ librarians and library aides to provide general library services to the LEA's elementary schools.

We interviewed one librarian and two aides. The librarian informed us that she was the only elementary librarian in the LEA during fiscal year 1973. Her duties include, (1) working with entire classrooms at different schools and (2) working with individual children sent by their teachers. She stated that she cannot identify the educationally deprived children and that she treats all children the same. The two library aides informed us that their major duties consisted of (1) keeping the library open in the absence of the librarian, (2) helping any student find books, (3) checking books in and out, (4) shelving returned books, (5) keeping the card catalog up to date, and (6) cataloging new books. Neither aide had any knowledge of which children were eligible for Title I.

We discussed the SEA's approval, review and monitoring of the above project with SEA officials and reviewers. The SEA reviewer stated that based on our description of the project it was obvious that he had not performed any special review and monitoring of the project prior to approval. Furthermore, LEA officials informed us that a SEA reviewer had questioned the use of library aides in the Title I program. However, because the reviewer did not say to discontinue the project, the LEA left the project in their application and it was subsequently approved by the SEA.

In our opinion the duties performed by the librarian and aides are general in nature and benefit all children in the school district. Furthermore, if the SEA had performed a closer review and monitoring prior to approval, we believe that the project would have been recognized as general aid to the LEA.

LEA Comments

The LEA stated in a reply to our draft report that:

> "The shadow of poverty extends to nearly 50 percent of the pupils in the public school who can be classified as educationally and culturally deprived. The

socio-economic level of the district is considered to be very low. To meet the needs of these disadvantaged children, we provided enrichment activities in art, music, and physical education to the entire population because we do not have the advantage of being in an area where the children see great art exhibits, musical performances, and physical education facilities, etc."

"The basic premise of the librarian's interview stating that she cannot identify the educationally deprived children and treats all the children the same, is true".

"If you were a student in one of these schools, never been in a library before you are then educationally deprived to the point of not knowing anything about library resources, materials, etc."

"If the Albert Gallatin Area School District were to adhere strictly to the 'letter of the law', we would be able to make only limited use of Title I funds."

As indicated by the above excerpts from the LEA reply, the projects implemented under Title I were serving all the children in the LEA. Title I regulations require that projects be designed to serve only identified educationally deprived children, and not service the needs of a school district at large. Furthermore, at the conclusion of our review at the LEA, the art, music, and physical educational programs were redesigned to serve only identified educationally deprived children. In our opinion the projects described in this report were not designed in accordance with Title I regulations and therefore should not have been approved by the SEA.

MCKEESPORT LEA

We identified activities involving the expenditure of about $341,711 (29 percent out of a total of $1,169,897) in fiscal years 1971 to 1973 funds that were for general

type programs and not tailored to contribute particularly toward meeting one or more of the special educational needs of educationally deprived children.

Furthermore, a SEA evaluation team visited the McKeesport LEA to evaluate the LEA's Title I program. The report issued in May 1972, by the team was critical of the LEA because the Title I program could not be distinguished from the regular LEA program. The LEA was advised to adjust the Title I program in order to receive future Title I fund . The LEA superintendent disagreed with the team's recommendations and did not adjust the Title I program.

The LEA submitted the fiscal year 1973 application without any changes in the projects criticized by the SEA evaluation team. The SEA reviewer approved the application on August 16, 1972 without requiring the LEA to change the questionable projects.

Curriculum Coordinators

The McKeesport LEA expended Title I funds totaling $212,531 from fiscal years 1971 to 1973 for curriculum coordinators. The LEA had not established a job description for curriculum coordinators. A review of school records indicated that the curriculum coordinator function was equivalent to the functions performed by principals and vice-principals. For example, the LEA issued a memorandum to elementary school principals on January 11, 1973, in which four Title I curriculum coordinators were listed as school principals. We also interviewd two curriculum coordinators and they informed us that their duties consisted of (1) giving teachers ideas and guidance and (2) performing administrative functions necessary to run an assigned section of a school or an entire school. Both coordinators agreed that they performed the duties of principal or vice-principal and that their duties benefitted the entire school not just educationally deprived students. In addition, an SEA evaluation team noted that

the curriculum coordinators were actually school principals and vice-principals.

It is our opinion that use of Title I funds to employ principals and vice-principals to perform duties which benefit all students does not meet the compensatory requirements of the Act. Furthermore, the funding of principals and vice-principals is the responsibility of the LEA.

Library Services

The SEA approved the expenditure of $80,451, during fiscal years 1971 to 1973, for librarians and librarian aides. This project was approved in fiscal year 1973 although the SEA evaluation team reported that services of Title I staff members are falling on all children. Moreover, a Title I funded librarian informed us that services were provided to all teachers and students and benefitted the *entire* school population.

In our opinion this project as implemented did not contribute specifically towards meeting the special educational needs of educationally deprived children. Instead, all the children in the schools served by the librarians and aides benefitted from the services provided.

Clerical Personnel

During fiscal years 1971 through 1973 Title I funds totalling $48,729 were used to hire four clerical personnel. Our review of the duties performed by the clerks showed they were administrative functions which were not related to the Title I program.

. . . Secretary for the Assistant Superintendent of Elementary Schools—This position was listed on the Title I application as a clerical position. However, the position was filled by the secretary for the Assistant Superintendent of Elementary Schools. The duties performed were of a secretarial nature and involved all the elementary schools in the district and were not related to Title I matters.

... Secretary—This position was listed as a clerical position on the approved application. The position as filled was for a secretary to the (1) supervisor of special education, (2) attendance officer, (3) home and school visitors, (4) speech therapists, (5) counselors, (6) psychologists, (7) nurses, and (8) dental hygienist. The duties were of a secretarial nature and served the above individuals who worked with all the children in the school district.

... Audio-Visual Clerk—This individual was in charge of the audio-visual department for all the elementary schools in the McKeesport Area District. The audio-visual materials were available to all the elementary teachers within the LEA.

... Secretary to the Career and Placement Coordinators —Served the career and placement coordinators in the high school. This service was available to all students and benefitted the entire student body.

In our opinion the above positions were not related to Title I services nor serving educationally deprived students. These positions were general administrative type positions and should have been funded with State and local funds. We noted that after we discussed the general nature of the positions with LEA personnel the positions were not included in the fiscal year 1974 application.

LEA Comments

The LEA comments did not specifically address the points raised in our report. The comments were general in nature and did not defend the projects questioned by us.

> "There is criticism of services and a suggestion that money was improperly spent. It is implied that disadvantaged children were not served. This is not correct. We feel very strongly that the services being criticized were most effective in dealing with disadvantaged children."

"We feel that our Title I activities are legitimate and within the guidelines of the Elementary and Secondary Education Act."

We agree that projects providing services to entire schools or districts do benefit disadvantaged children. But because they equally benefit those that are not disadvantaged, the projects are not eligible as Title I activities.

EXHIBIT B

PITTSBURGH LEA

Schedule of Schools Listed on Application as Eligible Title I Target Schools That Were Not Eligible

	1967-68		1968-69		1969-70			1970-71			1971-72	
Name of School	(A)	(B)	(A)	(B)	(A)	(B)	(C)	(A)	(B)	(C)	(A)	(B)
Beltzhoover	94	11			207	13	$ 35,615					
Chartiers	30	11						85	20			
Clayton	67	12			166	13	28,055					
Columbus	106	13										
Davis	27	11										
East Street	58	13	89	13	89	13	549					
Fairywood	48	11	77	12	77	12	21,572					
Fort Pitt	122	10			233	13	21,882					
Friendship	112	12	128	11	128	11	13,226					
Fulton	125	12	84	8								
Gladstone	95	12	147	12	147	12	13,428					
Grandview	127	11	197	11								
Greenfield	122	13	169	11	169	11	23,224	112	13	$ 21,261	39	9
Hays	51	12	51	12	51	12		110	24	132		
Holmes	103	11	155	13	155	13	20,642					
Larimer	71	11	138	14	138	14	51,224					
Lemington	134	11	180	11	180	11	26,152					

Liberty	125	11	125	11								
Lincoln	74	11	139	14	139	14	28,927					
Morse	63	11	118	12	118	12	4,966					
McCleary	103	11	110	11	110	11	6,896					
McNaugher	132	13	132	13	132	13	4,146					
Northview	119	10			217	13	58,817					
Phillips	132	12			213	12	21,006					
Regent Square	18	12										
Rogers	130	10	176	13	176	13	45,746					
Sheraden	125	8			220	8	20,672	291	21	17,675	139	15

(A) Number of children from low-income families

(B) Percent in school

(C) Amount of Title I funds expended

PITTSBURGH LEA

	1967-68		1968-69		1969-70			1970-71			1971-72	
Name of School	(A)	(B)	(A)	(B)	(A)	(B)	(C)	(A)	(B)	(C)	(A)	(B)
Spring Garden	80	11	114	12	144	12	13,493					
Spring Hill	54	11	54	11	54	11	966	125	24	$ 198		
Illegible	127	8	173	9	173	9	26,756					
Centerville	129	12	129	12	129	12	172					
Madison			169	17	169	17	22,936					
Mann			105	14								
Fairview			56	12	56	12	8,321					
Illegible			79	11	79	11	18,345	159	24	16,158		
East Park			113	22	113	22	19,232					
Fortes			142	21	142	21	27,189					
Conroy			157	20	157	20	25,836					
Illegible			187	19	187	19	91,367					
Schiller					219	17	30,552					
Salear					216	15	24,332					
Manchester					216	17	89,611					
Stevens					214	13	41,366					
Illegible					206	14	79,091					
Terron Hill					219	17	88,741					
Carrick	140	7	140	7	140	7	13,410				149	7
Columbus Middle	109	13	109	13	109	13	57,281					
Freefield	50	12	50	12	50	12						
Perry	136	8	136	8	136	8	14,888					

Prospect Jr.	124	11	124	11	124	11	12,877					
Knoxville Jr.			174	8	174	8	81,573					
Conroy			117	20	117	20	65,981					
Carrick Sr.								475	17	7,079		
Peabody Sr.								925	21	27,468		
Totals		36 Schools		44 Schools			$1,301,061	8 Schools		$89,971	3 Schools	
District wide percent from low-income		14		19		21.9			25			28
District wide average number from low-income		158		200		234.8			261.8			272.2

(A) Number of children from low-income families

(B) Percent in school

(C) Amount of Title I funds expended

Notes: 1968-69 15 schools eligible under percent method—35 were eligible under number method. Therefore, 36 were ineligible under combination method.

1969-70 17 schools eligible under percent method—23 were eligible under number method. Therefore, 44 of 67 schools were ineligible under combination method.

1970-71 63 schools eligible under percent method—58 were eligible under number method. Therefore, 8 of 71 schools were ineligible under combination method.

PITTSBURGH LEA

Title I Funds Expended at Schools Not Listed On Application as Eligible Target Schools

School	1969-70 Funds Expended	1970-71 Funds Expended
Grandview	$13,695	
Liberty	720	
Mann	1,096	
Morrow	14,240	
Prospect Elementary	14,270	
Halls Grove	1,928	
East Carnegie	550	
Minedio	5,590	
Sunnyside	90	
Westwood	849	
Wrightman	1,050	
Connelly Voc.	1,436	
Washington Education Center	22,439	$ 165
Arsenal Middle		7,334
Knoxville		93
South Hills		720
Total	$77,953	$8,312

EXHIBIT C

SCHOOLS LISTED BY PHILADELPHIA AS TARGET SCHOOLS

	FY 1971				FY 1970			FY 1969		FY 1968	
Name of School	(A)	(B)	(C)	(D)	(A)	(B)	(C)	(A)	(B)	(A)	(B)
Dunlap	140	21	$ 23,659	$ 7,130							
Barry	250	20	29,065	18,858	253	18	$ 23,575				
Harrity	150	20	25,633	16,880	184	18	17,933				
Holmes					280	18	19,245				
Anderson					181	15	19,500				
Catherine					128	15	23,884				
Warrington					146	15	16,522				
Longstretch					99	15	17,289				
Mitchell					96	15	31,308				
Patterson					154	15	25,383				
Powel					51	15	5,688				
Bead					16	15					
Sayre					261	15	53,697				
Illegible					327	15	21,303				
Martin					38	18	17,086				
Poe					86	15	7,357				
Stanton					112	15	66,266				
Wayne					85	15	11,616				
A. Yare					95	18	18,819				

Name of School	FY 1971 (A)	(B)	(C)	(D)	FY 1970 (A)	(B)	(C)	FY 1969 (A)	(B)	FY 1968 (A)	(B)
McCall					85	15	19,972				
Fell	130	22	22,459	3,057	88	13	13,771	88	13	88	13
Thomas					176	18	21,496				
McIntyre					190	18	34,350				
Stokley					80	18	15,195				
Walton					214	18	47,402				
Stanton					228	15	41,012				
Whittier					177	15	13,223				
Brown					108	18	14,185				
Conwell					83	18	15,218				

(A) Number of children from low income

(B) % of children

(C) Title I Funds budgeted

(D) HEWAA Traced expenditures

SCHOOLS LISTED BY PHILADELPHIA AS TARGET SCHOOLS

Name of School	FY 1971 (A)	FY 1971 (B)	FY 1971 (C)	FY 1971 (D)	FY 1970 (A)	FY 1970 (B)	FY 1970 (C)	FY 1969 (A)	FY 1969 (B)	FY 1968 (A)	FY 1968 (B)
Ludlow					177	18	$ 71,653				
Moffet					85	18	40,619				
Richmond					108	18	4,576				
Sheppard					113	18	13,113				
Welsh					133	18	54,351				
Willard					69	13	20,165				
Adair					103	15					
Clyner					173	15	42,596				
Martranft					61	15	26,473				
Carroll	40	20	$ 8,983		24	14	6,351	24	14	24	14
Kensington					207	15	62,975				
Kelley	200	23	70,215	32,501							
Mastbaum					211	15	34,760				
Kister					112	18	94,892				
Pastorius					108	15	33,399				
Cramp	100	15	15,853	3,184	124	18	12,177				
Illegible	80	15	26,210	12,569	87	18	22,160				
Sheridan					93	18	16,967				
Soedley					114	18	16,284				
Webster					61	18	24,380				
Wright	90	20	27,045	20,882	80	18	27,300				
Edmunds					124	15	7,365				
Lawton	80	14	22,651	11,144	79	15	19,088				
Marshall	80	17	10,659	3,815	60	15	4,576				

Name of School	FY 1971 (A)	(B)	(C)	(D)	FY 1970 (A)	(B)	(C)	FY 1969 (A)	(B)	FY 1968 (A)	(B)
Sullivan	120	19	15,237	8,504	92	15	9,990				
Taylor	80	16	28,520	3,565	74	15	23,562				
Harding					268						
Welsh	350	19	52,415	20,874		18	22,483				
Totals	14		$378,604	$162,963	54		$1,344,550				
District Wide I			24.5				20.0		15.3		15.14
District Wide Average			400				334		236		107.4

Note—We were only able to determine salary charges in 70-71.

EXHIBIT D

SCHEDULE OF INELLIGIBLE SCHOOLS McKEESPORT LEA

School	1970-71 # children low income	1970-71 % low income	1970-71 Salary Title I	1971-72 # children low income	1971-72 % low income	1971-72 Salary Title I	1972-73 # children low income	1972-73 % low income	1972-73 Salary Title I
McClure	96	8.5		97	8.5		99	8.54	
Lincoln	32	9.0		28	8.8	$ 4,980	11	3.48	
White Oak	95	9.4		85	9.2		55	6.02	
Fawcett	28	10.0		25	10.0	12,672	34	13.28	
Third Street	27	10.23		22	9.8		5	2.29	
Senior High	353	10.75		346	10.74		215	6.82	
Eleventh Ward	45	12.13		36	12.20		22	7.74	
Versailles-Walnut	53	12.80	$15,733	43	12.75	12,480	46	13.85	
Versailles-Avenue	62	12.81		49	12.56		79	19.41	
Illegible	20	13.51		21	13.46		14	9.03	
Grandview	75	14.37		63	14.54		56	13.02	
McKeesport	276	15.06		254	15.02		281	15.78	
Greenwood	54	15.84		39	15.60		31	12.10	$16,683
G. Washington	105	16.0		90	15.87		97	18.37	
Highland	46	17.56		37	17.28		29	13.30	
West Side	61	18.43		52	18.24		67	24.10	
Centennial	285	31.18		206	31.11		182	27.61	
Fifth Avenue	91	32.16		77	31.79		64	26.32	
Model	191	34.05		132	33.93		114	27.60	
			$15,733			$34,132			$16,638
Avg. No. per school attend. area = 105					89			79	
Districtwide % — 14.7%					14.2%			12.5%	

$65,548 = FYs '71 - '72 - '73

$50,815 = FYs '72 - '73

ALLENTOWN LEA 1972-73 SCHOOL YEAR

School	# Children From Low Income	% Low Income Children	# Children Bussed From Target Areas	# Children in Title I Reading Program	# Bussed Children in Reading Program	Reading Teachers Salary
Stevens	27	9.0	1	23	0	$ 6,689
McKinley	29	9.0	18	16	3	See Jackson
Garfield	25	9.0	8	20	2	See Stevens
Cleveland	42	9.0	8	20	1	10,923
Lincoln	29	9.0	18	20	2	See Lehigh Pky.
Wilson	15	7	12	18	5	See Union Terr.
Washington	25	7	6	20	0	See Cleveland
Ritter	44	7	23	27	6	6,769
Jefferson	64	7	34	19	0	7,531
Jackson	35	7	17	18	1	6,769
	31	3	24	17	2	See Jefferson
Lehigh Pky.	11	3	14	25	4	6,769
Union Terr.	20	3	16	27	1	5,979
Midway Manor	8	3	14	12	3	See Ritter
Muhlenberg	26	3	23	20	4	[1]
Totals			236	302	34	$51,429

Salary costs were only costs incurred.

District Wide %—9.1 Target Method A

Average Number per School Attendance Area—76

Note—LEA designated these schools as ineligible

[1] This school shared a teacher with a target school—money not included in finding.

EXHIBIT A

SCRANTON LEA

Dear Parent:

Your child ——————————, who is enrolled in the elementary grades of our city schools, is invited to participate in a new program to develop reading good literature as a [illegible] use of leisure time.

You are probably aware that the school year will end on Friday, June 18th and that summer school will open July 6th. It is our hope that in this three week period, your child will want to have available a number of good books to enjoy should there be an abundance of free time. We feel that the reading habit and reading skills can be lost if there is no material easily available.

Therefore, through the Learning Resources Cooperative Program of Title I, a number of school libraries will be kept open and staffed on the closing day of school, Friday, June 18th, between 9:00 a.m. and 12:00 non. At this time, your child may borrow several books, paperbacks, magazines and other available library materials for that three week period when schools will be closed.

These materials may be returned when summer school opens and the full program is again in operation. We are enclosing a copy of the library schedule for your convenience.

Please encourage your child to be a part of this worthwhile opportunity since we are certain that short, daily periods of reading provide educational enrichment, satisfying relaxation and meaningful recreation.

Very truly yours,

/s/ Anthony F. Musso
ANTHONY F. MUSSO
Program Coordinator

/s/ Mary B. Kelly
MARY B. KELLY
Library Supervisor

APPROVED:

EUGENE M. LANGAN
Acting Superintendent

SCHEDULE OF PROGRAM COSTS BY FISCAL YEAR AND
AMOUNT QUESTIONED FOR REFUND BY SEA

PROGRAM	FISCAL YEARS 1968	1969	1970	1971	1972	1973	TOTALS	AMOUNT QUESTIONED AS REFUNDABLE
NIA								
ry Aides	$673,073.96	$632,649.35	$1,019,116.77	$231,947.86			$2,556,787.94	$2,556,787.94
olor Aides		80,642.53	158,391.54	114,954.86			353,988.93	353,988.93
rtem Aides		483,674.26	748,222.50	153,309.65			1,385,206.41	
Specialist Teachers		485,856.01	656,255.88	102,785.06			1,244,896.95	
or Aides		994,749.26	1,515,272.69	241,118.31			2,751,140.26	
l General Aid							$8,292,020.49	$2,910,776.87
gible Schools				$162,963.00			$ 162,963.00	$ 162,963.00
NG								
r Education - Unable to Determine Expenditures								
D								
ving Resources	$ 83,571.00	$ 68,589.00	$ 77,523.00	$ 62,432.00			$ 292,115.00	
ELLATIN AREA								
				$ 6,800.00	$25,700.00	$41,000.00	$ 73,500.00	$ 73,500.00
l Education				12,700.00	19,800.00	36,600.00	69,100.00	69,100.00
ry				37,900.00	34,000.00	40,000.00	111,900.00	111,900.00
l General Aid				15,740.00	15,740.00	24,790.00	56,270.00	56,270.00
							$ 310,770.00	$ 310,770.00
PORT								
iculum Coord.				$ 40,400.00	$73,031.00	$99,100.00	$ 212,531.00	$ 212,531.00
ry Services				23,848.00	32,252.00	24,351.00	80,451.00	80,451.00
ical Personnel				16,612.00	13,416.00	18,701.00	48,729.00	48,729.00
l General Aid							$ 341,711.00	$ 341,711.00
gible Schools					$34,132.00	$16,683.00	$ 50,815.00	$ 50,815.00

EXHIBIT G
Page 1 of 2

SCHEDULE OF PROGRAM COSTS BY FISCAL YEAR AND
AMOUNT QUESTIONED FOR REFUND BY SEA

PROGRAM	FISCAL YEARS 1968	1969	1970	1971	1972	1973	TOTALS	AMOUNT QUESTIONED AS REFUNDABLE
[illegible]								
[illegible]gible Schools			$1,301,061.00	$ 89,971.00			$1,391,032.00	$1,391,032.00
[illegible] Not on Application			77,953.00	8,312.00			86,265.00	86,265.00
[illegible]							$1,477,297.00	$1,477,297.00
[illegible]								
[illegible]gible Schools						$45,639.00	$ 45,639.00	$ 45,639.00

EXHIBIT G
Page 2 of 2

APPENDIX I

[SEAL]

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
Harrisburg, Pennsylvania 17126

Commissioner for basic education June 28, 1974

Mr. G. A. Rafalko
Regional Audit Director
Department of Health, Education
and Welfare
HEW Audit Agency
P.O Box 13716
Philadelphia, Pennsylvania 19101

Dear Mr. Rafalko:

The following is the response of the Pennsylvania Department of Education of the ESEA Title I audit control number 40003-03 for the period July, 1967 through June 30, 1973. Our response is organized according to the outline of the Draft Report.

Introduction

No specific comments.

Background

No specific comments.

Scope of Review

No specific comments.

Highlights of Audit Results

Our comments in later sections of this paper relate to several results. However, the third paragraph of that sec-

tion contains what we feel are serious misunderstandings concerning general aid and supplemental services. It is the position of this Department that where specific buildings have very high percentages of children scoring below the national average on standardized tests of basic skills and/or tests of cultural deprivation that the charge of general aid in those buildings is completely inappropriate. We believe the auditors concentrated solely upon the material available in the applications dealing with the percentages of formula children. No statistics or information were available to those auditors concerning the extent of educational deprivation. Attached to this letter are extensive and detailed responses from the several school districts against whom specific charges of general aid have been made. We believe that these responses clearly demonstrate that where districts verify the overwhelming extent of educational deprivation in a given school that a charge of general aid should be completely dropped.

Moreover, the allegation that programs did not meet the goal of concentrating supplemental compensatory education benefits on educationally deprived children is refuted by the attached reports. These reports indicate adherence to Section 116.1 (i) and 116.17 (f) of the Federal Regulations for Title I programs as well as a definition of "educationally deprived child" set forth in U. S. Office of Education Question and Answer Booklet, "Programs for Educationally Deprived Children." It is the position of the Department of Education that this set of definitions allows school districts to reach beyond basic academic subjects by giving them considerable latitude in serving the broad range of activities to combat poverty, neglect, deliquency, handicaps, and cultural, economic, ethnic and linguistic isolation from the general community. Meeting more than one of the special educational needs of these children is in conformity with Section 116.17 (g) of the Federal Regulations. It must be remembered that the services excepted to by the auditors were all in addition to

more fundamental educational programs being provided by the LEA's through Title I funds.

Findings and Recommendations

The second paragraph on page 4 is not accurate. Despite the fact that there was a major reorganization of the Pennsylvania Department of Education in December 1972 which transferred the Division of Compensatory Programs to the Bureau of Special and Compensatory Education, the Division remained under the operational control of the Bureau of Planning and Evaluation until June 30, 1973. Although page 4 of the draft report alludes to involvement of the 16 EDC's in the planning and consultation with the LEA's, this responsibility ceased upon conclusion of fiscal year 1972 (August 1972).

Our comments on page 5, second paragraph are as follows:

Currently, project application review procedures rest solely with the Division of Compensatory Programs through a team of seven reviewers (soon to be 12), each of whom has responsibility for 60 to 70 ESEA Title I applications. The Pennsylvania Department of Education believes that existing review procedures are of sufficient depth to assure that program funds are expended in accordance with Title I regulations and guidelines. As a result of program and fiscal reviews, every effort has been made to alleviate the possibility of error within the application review procedures, the most critical of which are reviewed by a number of ESEA Title I staff members. For example, the target method of each school district is reviewed by five and frequently six staff members including:

Administrative Assistant
Budget/Fiscal Reviewer
Audit Clerk
ESEA Title I Reviewer
Senior Program Officer (upon occasion)
Division Chief

Although the margin for error within a single application is considerable, the Title I office is continually striving to perfect the overall application review procedures. In addition, U. S. Office of Education recommendations for improvement in the administration of Title I, by way of annual monitoring visits is recognized by the State Education Agency as an ongoing activity. Our responses to the written recommendation from U. S. Office of Education contained positive actions which the Department is or has taken to rectify any weakness in administration procedures which have been brought to our attention by the U. S. Office Monitoring Team.

Programs Implemented Provided General Aid

The audit report states that, "In most cases, the LEA Title I application indicated that the projects were providing general aide." The SEA, without equivocation, states that in no case was a project knowingly approved which indicated general aid was intended rather than direct or supportive service for educationally disadvantaged children. What has occurred, we believe, is a serious misunderstanding between auditors and Title I reviewers about the nature and intent of Title I.

We believe that the "indications of general aid" that the auditors are talking about stem from the close examination by the auditors of the percent of economically disadvantaged children believed to be in a given building. This is the information which appears in an application. The auditors apparently completely equate "economically disadvantaged" with "educationally disadvantaged." For example, on page 30 of the report under *Conclusions and Recommendations*, the auditors begin by stating, "The effectiveness of the Title I program in meeting the special educational needs of *economically* deprived children." Thus, it becomes very natural for an auditor to lecture the SEA in the report about the part of the Title I regulations which addresses itself to tailoring projects toward meeting one or more special educational needs and not de-

sign projects merely to meet the needs of schools or of the student body at large in a school or in a specified grade in a school, since the auditors apparently consider only a limited percent of children in each building to be eligible.

Since nearly all the buildings in the five districts accused of improperly spending funds on page 12 report percentages of economically disadvantaged children, 60 per cent or less, it is no wonder the auditors look askance at services such as library assistants, counselor aides, art, music, physical education, curriculum coordinators, and clerical perssonel as indications of general aid.

However, since Title I is not a "poor person' " program, but a program for educationally disadvantaged children who may need a broad range of services to stem or combat educational disadvantagement, the severely limiting economic percentages can *not* be used to determine to what extent services should be available within the eligible buildings. It is the position of the Department of Education and the U. S. Office, we believe, that it is the extent of educational deprivation and the nature of that deprivation among students within the eligible buildings, as determined by a needs assessment, which, in the final analysis, determines which services shall be offered.

It is our contention that within those districts chosen for audit by HEW, the extent of educational deprivation in individual buildings is only generally perceived by reference to percentages of economically disadvantaged children within the building. For example, in Philadelphia where the broadest and most far reaching charges of general aid have been made in the specific buildings where general aid is alleged, the overwhelming majority of children were scoring well below the national norms on all available standardized measures and were in dire need of all types of supportive services. Well above 70 percent of the children in the buildings where Title I services were offered were below national norms, as evidenced by standardized tests in basic skills. It was the position of the Department that a cafeteria of services needed to be avail-

able to help those children. This was a position generally shared by educators during the period 1968-1972. We continue to believe that where overwhelming numbers of educationally disadvantaged children are concentrated within specific buildings, the special educational needs of these children are identified as being the needs of children within that building and the charge of general aid is inappropriate particularly where the evidence clearly indicates that districts did not and do not have the resources to supply these supplemental services with their general funds. Library assistants, teacher aides, kindergarten aides and counselor aides are examples of supportive services most commonly attacked as general aid and which districts are able to fund in a most limited way. Furthermore, it had been the position of the Department reviewers at that time that the district could slowly pick up supportive services with local funds as local funds became available. That position has been corrected by program auditors from the U. S. Office within the last two years and this type of supplanting as it is now called, has been stopped.

Another aspect of general aid referred to in terms of the five districts is that art, music and physical education teachers funded at the elementary level represented supplantation because of Pennsylvania General Curriculum Regulations requiring art, music and physical education programs at the elementary level. However, that argument becomes invalid because art, music and physical education programs at the elementary level were more commonly offered by the elementary teacher, not a specialist. These programs are minimal at best. The employment of an art, music and/or physical education teacher/specialist in elementary buildings with overwhelming percentages of educationally disadvantaged youth represented a supplementary service in the years 1968-1972. Probably one of the most significant signs of the general success of Title I is the willingness of urban districts to pick up with their limited resources, services now considered essential, but

formerly considered supplementary. Without a doubt, it was Title I funds which enabled the Philadelphia School District to employ its first elementary art and music teachers. The art and music teachers employed with district funds represents the initial attempts of the district to begin picking up what was, at the beginning, a purely federally funded program. The Department refuses to believe that the U. S. Office regulations are intended to be punitively enforced against districts who improved their offerings to children in this manner. These same comments, of course, apply to the several other categories supporting services, almost none of which existed before Title I.

The Philadelphia School District is extensive in detailing evidence of educational deprivation over the years in question, the buildings in question and the programs in question.

The attached documents fully explain the actual facts surrounding the allegations of general aid. However, in brief, the errors of the auditors can be characterized as follows:

a) Failure to differentiate screening from actual program participation.

b) Failure to note differences in program content and intensiveness between Title I programs and other LEA programs.

c) Insistence that serving all children in a district or school is "general aid" despite the fact that all or nearly all were economically and educationally disadvantaged. This has special significance in attacking cultural deprivation (Section 116.1 (i) of Federal Regulations).

d) Failure to consistently indicate that in cases of alleged general aid of a "cultural education" nature, that districts were spending most of their Title I money on reading, math, etc. for eligible students.

> The draft report makes little or no mention of this, leaving the reader with the impression that art, music, physical education and libraries are the only items being funded by Title I.

More complete explanations of all the "general aid" challenges are contained in the attached documents and are included herein by reference.

Additionally, the audit report indicates that "In most cases, the LEA Title I application indicated that the projects were providing general aid." The SEA states without equivocation that in no instance was a project knowingly approved which indicated that general aid was being provided. We also disagree with the statements made in the first paragraph on page 7 because they are unwarranted generalizations not supported by specific information and we further contend that there is no such supporting information. In only a few limited instances did projects get approved where previous reviewers had instructed districts to stop certain activities, and these can be directly attributed to necessary shifts of personnel, plus differing opinions about the legality of certain practices. Where projects were to be discontinued for the following year, the time frame was usually in the late spring when the recommendations were made.

We disagree with the statement on page 6 about SEA not requiring LEA to submit needs of children in order of priority. Please see the attached instructions.

Conclusions and Recommendations

On page 12 we asked that reference be made to verifying sums alleged to be improperly spent. It is imperative that USOE reconsider the retrieval from school districts of so-called "improperly spent Title I funds" until such time as the Pennsylvania Department of Education conducts its own review of the HEW audit findings. Then, and only then, can mutual agreement be realized in the finalization of the HEW audit report. In addition, it is

essential that OE review the written responses to the HEW audit report, as prepared by the respective school districts.

I would also add that there does not seem to have been a pragmatic consideration of the problems involved in implementing programs in severely distressed districts. Serving children with multiple needs using limited resources is a difficult task and one which must be reviewed in a fashion more cognizant of the specifics of the program, as well as the problems being faced by the school administrators as they attempt to lawfully expend Title I funds.

Need for Improvements in Methods Used to Evaluate Selections of Target Schools

I have no specific comments.

Program Requirements

I have no specific comments.

Submitted Proposals Included Many Ineligible Schools

I have no specific comments.

Expenditures at Non-Target Schools

No specific comments; however, the LEA's mentioned as examples have prepared specific and detailed responses which are attached hereto.

Continuing Weaknesses in SEA Review Procedures

We question statements about desegregation and eligible schools. During the period of time covered by this audit, certain school districts were under court orders concerning the State Human Relations Commission to desegregate their schools. Among these were Pittsburgh, Harrisburg, Chester-Upland, Philadelphia, Erie City, York City, Norristown Area, Coatesville Area, Wilkinsburg Bor-

ough, Aliquippa Borough, McKeesport Area, Farrell Area, Southeast Delco, Clairton City, Penn Hills Township, Allentown City, Washington, Duquesne City, New Castle Area, Greater Johnstown Area and Central Dauphin. Consequently, in an effort for the Title I program of the above school districts to have a positive effect on their desegregation programs and primarily because of the dispersal of minority group children throughout the district, the Title I office in effect recognized these districts as being able to declare the entire school district as an eligible attendance area. We submit that within that eligible district only educationally disadvantaged children were served, subject to the types of situations described in our comments on general aid. I would again refer to Program Guide # 64 of the Federal Office which encourages the state and local education agencies to do nothing that would encourage segregation. I again refer you to the attached specific comments of the school districts which are involved in your conclusions and recommendations section.

Need for More Management Emphasis on Project Evaluation

I have no specific comments.

Approved Projects Did Not Include Clearly Stated Education Objectives

The statement concerning identifying needs on a primary basis is inaccurate in paragraph three, page 25. See attached guidelines for 1970-71.

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION
Washington, D.C. 20202

Jun. 11, 1976

Our Reference: ACN: 50006-02
Honorable Fred G. Burke
Commissioner of Education
State Department of Education
Trenton, New Jersey 08625

Dear Commissioner Burke:

Reference is made to the Health, Education, and Welfare Audit Agency report of audit of the operation and administration of the Title I, Elementary andy Secondary Education Act program as it relates to the Selection of Target Areas in the Newark LEA in your State for the period September 1, 1970 to August 31, 1973.

The decisions set forth in this letter are based on a thorough examination of the audit report and all information your agency has submitted for purposes of resolving the pending audit exceptions including its most recent response of May 7, 1976. We are not in a position to announce our final determinations with respect to those unsettled matters included in the above-cited audit report. Our decision is that it will be necessary for your agency to refund $1,161,917 to the Office of Education in order to settle this audit. In Enclosure No. 1 to this letter, you will find a detailed discussion of our determinations.

If your agency concurs with our final determinations, you should submit payment in the amount of $1,161,917 to the U.S. Office of Education. Should your agency wish to ap-

peal our final decision, you may request a hearing. The procedure for a hearing on appeal of final audit determinations is contained in Enclosure No. 2 to this letter.

Sincerely,

/s/ Robert R. Wheeler
ROBERT R. WHEELER
Deputy Commissioner
for School Systems

Enclosures

Enclosure No. 1

FINAL AUDIT DETERMINATIONS

Audit Control No: 50006-02

State: New Jersey

Program: Title I, ESEA

Period Covered: September 1, 1970 to August 31, 1973

SELECTION OF TARGET AREAS—$1,161,917

The auditors' review disclosed that the Newark LEA used Title I funds totaling $1,161,917, in school years 1970-71 and 1971-72, in schools which did not meet the eligibility requirements established in Section 116.17 of the Title I regulations. The auditors asserted that critical review of project applications for these periods by officials of your agency and the LEA would have disclosed information gaps and a lack of detail on the methods used to determine eligibility of school attendance areas. The auditors indicated that although source data in support of the 1970-71 eligibility determinations were not available, it was clear on the face of the project application for that year that one school, based on the low-income percentage shown, was improperly classified as eligible and received $91,266 in Title I program funds. The auditors noted that during school year 1970-71, ten schools received $41,021 in Title I funds even though they did not appear on the LEA's approved project application and were, therefore, ineligible. The auditors also discovered that in school year 1971-72, the Newark LEA, by using improper ratios, misclassified 13 schools as eligible to receive $1,029,630 in Title I funds. The breakdown is as follows:

Expenditures by Ineligible School (Lafayette) Shown as Eligible in Project Application—$91,266

The auditors found that because the LEA failed to retain the essential documentation, the reliability of the districtwide percentage of low-income children, stated in the application of 25.5 percent, could not be confirmed. In addition, the auditors could not validate the low-income percentage computed for each attendance area. The auditors, therefore, could not determine which of the 74 schools listed in the Title I application were actually eligible for Title I funds. However, they noted that among the schools included in the application there was one, the Lafayette Street School, which on the face of the application showed a low-income percentage of 23.5 percent, which was two full percentage points below the stated districtwide average of 25.5 percent. The auditors, therefore, concluded that the use by this school of $91,266 in Title I funds was in violation of Section 116.17(d) of the Title I regulations. Your agency's earlier responses regarding this matter were reviewed and determined to be inadequate. Your agency's latest response, dated May 7, 1976, does not refute the auditors' finding. Instead it states that your agency had verbally "cited" the district regarding its target area selection source material and apparently "considered the poor economic environment in Newark at that time" as an adequate basis upon which to approve the expenditure of Title I funds. This response is clearly not adequate to refute the auditors' finding and, in fact, supports their contention that your agency's review of target area selection processes was deficient. Therefore, your agency must refund the sum of $91,266 to the Office of Education.

Expenditures by Ten Ineligible Schools Excluded from Application—$41,021

The auditors' review disclosed that during school year 1970-71 ten schools, which were not eligible to receive

Title I funds because they were not listed on the Title I application as constituting Title I school attendance areas, expended Title I funds totaling $41,021 in violation of Sections 116.17(a) and (c) of the Title I regulations. Your agency's earlier response to this finding was inadequate. The supplemental response of May 7, 1976, does not attempt to refute the auditors' finding. It merely asserts that your agency has encountered difficulty in developing a response to the auditors and requests the documentation used in their review. In view of the fact that your agency (1) has direct access to the Newark LEA's target area selection material, (2) indicated in your earlier response (December 10, 1974) that it had already reviewed the material in question, and (3) failed to request copies of the audit workpapers at the exit conference or at the meeting held in Washington, D.C., on November 19, 1975, or during the period which passed between that meeting and your supplemental response, we do not feel that it is appropriate to delay resolution of this matter further. Therefore, your agency must refund the sum of $41,021 to the Office of Education.

Expenditures Due to Improper Identification of Eligible School Attendance Areas—$1,029,630

The auditors found that the method used by the Newark LEA to determine the eligibility of attendance areas for school year 1971-72 deviated from that set forth in Title I regulatory mandates, particularly Section 116.17(d) of the Title I regulations. The LEA utilized AFDC statistics from the County Welfare Board which listed the total number of children in the AFDC category enrolled at each regular public elementary and secondary school. These statistics, however, were incomplete since they excluded those children on AFDC rolls who were attending nonpublic, or special educational schools or who had dropped out of school. The limitations of the statistics suggested to the LEA the use of an alternative ratio pre-

sented in ESEA INST. L203.1, section 1.1. This section recognized that in some instances (as did not exist in Newark during the period in question) schools may not have well-defined attendance area boundaries or receive numbers of children from outside the areas that have been designated to those schools. In such cases, it may be necessary to use a ratio for ranking attendance areas which is based on the percentage or number of children from low-income families actually enrolled in those schools rather than the number of such children eligible to attend the public school serving that attendance area. The auditors pointed out that while the former ratio was not permitted to be used by the LEA under ESEA INST. L203.1, it was a reasonable alternative under the circumstances.

However, the auditors found that in its attempt to apply the selection system described by INST. L203.1, the LEA devised hybrid ratios which deviated from the method specified. The auditors revealed that the ratios utilized by the LEA had basic mathematical flaws which tended to inflate the low-income percentages for individual elementary and secondary school areas and thus to increase improperly the number of eligible attendance areas. Based on their recalculation of the target area selections for the Newark LEA, the auditors determined that ten elementary schools and three secondary schools had low-income percentages lower than the district wide average and were ineligible for Title I funding. The auditors recommended that your agency be required to refund the $1,029,630, which represents the Title I funds expended at schools which were determined to be ineligible to receive such funds.

Your December 10, 1974, response to the auditors was based on the assertion that the auditors only utilized AFDC data in arriving at their recalculation rather than the several sources listed in the Newark application and that the number of children identified as eligible was too low. In support of your agency's position, is the pertinent

page of the Newark LEA project application. However, this document clearly states that "the criterion used in qualifying schools based on statistics on Aid for Families of Dependent Children was supplied by the Essex County Welfare Board." It further states that, "Before selecting this method for qualifying attendance areas and schools with those areas the following data (those noted in your response) were also examined." In view of the obvious support which your submission gave to the auditors' recalculations, we could not accept your earlier response as adequate to refute their findings.

Your agency's supplemental response of May 7, 1976, provides an ex post facto recalculation of the target area selection figures for the schools found to be ineligible by the auditors. However, your response states that your agency used in the denominator of its calculations "the Elementary School enrollment *plus the percentage of students attending the Junior High and High School from that eligible attendance area.*" (emphasis supplied) This is exactly that same type of improper count which gave rise to the initial audit exception and which this Office has already indicated is not permissible under the regulations or INST. L203.1. Therefore, your agency must refund the sum of $1,029,630 to the Office of Education.

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION
Washington, D.C. 20202

May 18, 1976

Our Reference: ACN: 50000-03
Honorable John C. Pittenger
Secretary of Education
State Department of Education
Harrisburg, Pennsylvania 17126

Dear Secretary Pittenger:

Reference is made to the Health, Education, and Welfare Audit Agency report of audit of the operation and administration of the Title I, Elementary and Secondary Education Act program in your State from July 1, 1967 through June 30, 1973.

The decisions set forth in this letter are based on a thorough examination of the audit report and all information your agency has submitted for purposes of resolving the pending audit exceptions, particularly the response submitted January 23, 1976. We are now in a position to announce our final determinations with respect to those unsettled matters included in the above cited report. Our decision is that it will be necessary for your agency to refund $1,346,399 to the Office of Education in order to settle this audit. In Enclosure No. 1 to this letter, you will find a detailed discussion of our determinations.

If your agency concurs with our final determinations, you should submit payment in the amount of $1,346,399 to the U.S. Office of Education. Should your agency wish to appeal our final decision, you may request a hearing. The

procedure for a hearing on appeal of final audit determinations is contained in Enclosure No. 2 to this letter.

Sincerely,

/s/ Robert R. Wheeler
ROBERT R. WHEELER
Deputy Commissioner
for School Systems

Enclosures

Enclosure No. 1

FINAL AUDIT DETERMINATIONS

Audit Control No: 50000-03

State: Pennsylvania

Program: Title I, ESEA (Follow-Up)

Period Audited: July 1, 1976 through June 30, 1973

IMPROVEMENTS NEEDED IN SEA's ADMINISTRATION OF PROGRAM

The auditors' review disclosed that your agency's examinations of project applications were not performed in sufficient depth to assure that program funds were expended in accordance with Title I regulations and guidelines.

Programs Implemented Provided General Aid

The auditors found that eight LEAs expended over $9.2 million in Title I funds for projects which as approved and implemented failed to meet the special educational needs of educationally deprived children because they met the needs of schools or of student bodies at large in a school. This, the auditors pointed out, is in violation of Section 116.17(g) of the Title I regulations. The auditors also found some instances in which the activities in the LEAs supplanted State and local funds, in violation of Section 116.17(h) of the Title I regulations. The breakdown is as follows:

Philadelphia LEA (FY 1971)—$346,903
Library Assistants (FY 1971)—$231,948

Title I funds, totaling $231,948, were expended during FY 1971, as well as earlier, to pay salaries of libarary as-

sistants whose routine clerical and mechanical duties were associated with the overall operation of the libraries rather than directed at the special educational needs of educationally deprived children. Your agency's response of January 23, 1976, states that your review of the FY 1971 project application neither confirms nor refutes the auditors' findings. It bases your refutation of the auditors' findings on the assertion that *Guidelines: Special Programs for Educationally Deprived Children, OE-35079,* would have countenanced this program and that guidelines and regulations in effect at the time were vague and did not require job descriptions for project approvals. We do not consider this general response to be an adequate refutation of the audit finding, nor does it demonstrate that the activities of the library assistants in question did not meet the needs of the schools or student bodies at large. The LEA material in this matter, which makes the unsupported assertion that the library assistants provided direct service to educationally deprived students, is not sufficient to cause a modification of our earlier position on this matter. Therefore, your agency must refund the sum of $231,948 to the Office of Education.

Counselor Aides (FY 1971)$114,955

The auditors' review disclosed that during FY 1971, $114,955 in Title I funds were expended to provide counselor aides whose general clerical and interveiwing services for counselors were serving the needs of the school populations at large. In addition, the auditors found that the counselor aides' services supplanted State and local funds available for counselor aides. Your agency's position with regard to this finding is the same as its position on the library assistants, although in this case it also asserts that the duties of the Title I-funded and non-Title I-funded counselor aides were dissimilar. This generalized response is not adequate to refute the auditors' finding. With regard to the duties of the Title I and non-

Title I counselor aides, neither your agency nor the LEA presents any evidence or documentation tending to demonstrate that the Title I students in the target schools received services over and above their fair share of the counseling services normally provided through State and local funds. Therefore, your agency must refund the sum of $114,955 to the Office of Education.

Albert Gallatin Area LEA (FY 1971 and 1973)—$310,770

Art, Music, and PE Teachers (FY 1971 to FY 1973)—$254,500

The auditors found that $254,500 in Title I funds were expended from FY 1971 to 1973 for art, music, and PE teachers who were giving instruction to all children in the school to which the teachers were assigned. In addition, the auditors pointed out that your agency itself was apparently concerned that this program was supplanting the State and local effort. Your agency's response with regard to the general aid aspects of this finding is based on the assertion that large percentages of low-income children were present and that OE-35079 recognized that some projects by their nature tend to benefit all children. However, the mere presence of large numbers of low-income children is not controlling in the Title I program which is designed to serve only the educationally deprived children from such areas. Again it must be pointed out that regardless of the *implications* contained in OE-35079 in 1966, the Title I regulations in effect at the time these particular programs were operated clearly preclude the provision of services which meet the needs of the student body at large in a school. The LEA responses on this matter are similar to those of the SEA; however, they add the contention that the program cited by the auditors is the same as one disseminated as exemplary by OE and that the auditors did not visit the program while it was in

operation. The facts and material presented by the LEA, however, are insufficient to support the first of these contentions, and regardless of the timing of the auditors' visit, no substantive refutation of their findings is presented by the LEA. In view of these factors and the absence of adequate documentary material to refute the audit finding, your agency must refund the sum of $254,500 to the Office of Education.

Librarians and Library Aides (FY 1971 to 1973) —$56,270

The auditors' review disclosed that $56,270 in Title I funds were expended for a librarian and library aides whose duties were general in nature and benefited all children in the school district. Your agency's response to this finding is the same as that for the art, music, and PE teachers. The LEA response is similar but also states that it is the LEA's position that, "all children in our area should enjoy the benefits of the (Title I) program." In view of our position as stated above and the LEA's remarks, we support the auditors. Therefore, your agency must refund the sum of $56,270 to the Office of Education.

McKeesport LEA (FY 1971 to 1973)—$341,711
Curriculum Coordinators (FY 1971 to FY 1973)— $212,531

The auditors found that in the McKeesport LEA, $212,531 in Title I funds were expended for curriculum coordinators who were performing duties of school principals and vice-principals and whose services benefited entire schools rather than only the educationally deprived children in those schools. Your agency's response adopts that given by the LEA and states that your agency presumed, "that the positions in question were supplementary in nature and provided services to identified, disadvantaged children." The LEA response states that the curriculum coordinators were necessitated by problems

generated by racial integration of concentrations of disadvantaged children and the need to prepare programs and materials for use by the educationally disadvantaged students in the schools. However, the curriculum coordinators' job descriptions, which had been presented by the LEA was not included in your agency's response, and there was no documentary evidence in support of the LEA's contention that the curriculum coordinators' services were used "primarily" for Title I children. Therefore, your agency must refund the sum of $212,531 to the Office of Education.

Library Services (FY 1971 to 1973)—$80,451

The auditors' review disclosed that your agency approved the expenditure of $80,451 in Title I funds for librarians and library aides whose services were provided to all teachers and students and benefited the entire school population. Your agency's response relies on the LEA's position and provides no specific information with regard to this finding. The LEA's response asserts that the Title I-funded library services were provided primarily to eligible Title I participants and that if others benefited it "was merely a spin-off." The LEA also asserts that the Title I participants received services above and beyond those granted other children in the district; however, neither of these assertions is supported by any documentation. In the absence of any documentation adequate to refute the auditors' findings, your agency must refund the sum of $80,451 to the Office of Education.

Clerical Personnel (FY 1971 to 1973)—$48,729

The auditors found that $48,729 in Title I funds were expended to pay for the services of four clerical persons whose administrative duties were only remotely connected to the Title I program and whose salaries should have been provided with State and local funds. Your agency has

provided no specific response to this finding and relies instead on the responses provided by the LEA. The LEA responses generally assert that the clerical services in question were necessitated by various educational needs of Title I program participants. However, there are no samples of the documents allegedly kept by these clerks for Title I students or which demonstrate an activity in response to the program participants' needs. In the absence of any documentation, which is adequate to support the LEA's assertions or refute the auditors' findings, your agency must refund the sum of $48,729 to the Office of Education.

In addition to the recommended refund pertaining to Title I funds being used to benefit entire school populations or to supplement State and local funds, we support the auditors' recommendations that your agency: (1) develop and implement procedures for more indepth review and analysis of project proposals; (2) require LEAs to immediately revise or terminate projects which your agency's reviewers identify as containing activities not in accordance with program criteria, and establish appropriate followup procedures to assure that necessary revisions are made in a timely manner; and (3) disapprove LEA proposals that provide for the use of Title I funds for activities which merely meet the needs of schools or of the student body at large in a school or in a special grade in a school.

NEED FOR IMPROVEMENT IN METHODS USED TO EVALUATE TARGET AREA SELECTION—$347,015

Proposals Included Many Ineligible Schools

The auditors' review of project proposals submitted by 24 LEAs for FY 1978 through 1971 showed that 15 of the LEAs had proposed, and received SEA approval, to designate as eligible and conduct Title I activities in 409

schools that did not meet established criteria. SEA approval was given though information included in the project application showed the schools selected had concentrations of children from low-income families below the districtwide average. The auditors specifically mentioned the McKeesport, Wyoming Valley, and Hazelton LEAs in connection with this condition. No response to this section of the report was provided by your agency or by any of the LEAs involved. We support the auditor's recommendation that your agency place additional emphasis on the review and evaluation of schools selected by LEAs in relation to established criteria.

Expenditures at Non-Target Schools—$250,561

Pittsburg LEA (FY 1971)—$98,283

The auditors' review disclosed that during FY 1971 the Pittsburgh LEA designated a total of eight schools ($89,971) as eligible to participate in the Title I program even though they had concentrations of children from low-income families below the districtwide average and were, therefore, not eligible Title I schools. The auditors were unable to determine why the schools in question were selected since there were no records or other target area selection data available. In addition, the auditors identified four schools ($8,312) at which expenditures of Title I funds were made even though the schools in question were not listed on the Title I project application as eligible to participate in the program. Your agency's response points out that it was aware of difficulty the LEA was having obtaining hard data for target area selection. In addition, your agency's response states that the SEA "chose to disregard the statistics on the application in favor of the more compelling reality of the alternate data," which is a clear violation of Section 116.17(d) of the Title I regulations. The LEA response recounts the

difficulties in obtaining hard target area data for the early years of the program but states that the first hard data was available for FY 1971 programs. Samples of such data are provided with the LEA response. Although your agency asserts that adequate data did not become available until the close of FY 71, no documentation is provided in support of that assertion. In the absence of such documentation, we must support the auditors' recommendation with regard to the $89,971. Neither the SEA nor the LEA has responded with regard to the $8,312 questioned by the auditors. In view of these factors, tending in fact to support the auditors' findings, we support the auditors' recommendations. Therefore, your agency must refund the sum of $98,283 to the Office of Education.

Philadelphia LEA (FY 1971)—$152,278

The auditors found that the LEA expended Title I funds, totaling $152,278, for salaries of personnel assigned to schools that had not been designated by the LEA on the project application as attendance areas eligible to participate in the Title I program. The auditors noted that the $152,278 had been identified in a limited review of payroll records conducted by the Comptroller's Office of the City of Philadelphia. The thrust of both your agency's response and that of the LEA is directed at justifying expenditures in schools which fall below the districtwide average, not at justifying expenditures in schools not listed by the LEA as eligible to participate. Therefore, it appears that the responses are directed at the funding of $162,963 of improper expenditures in a different finding which we pointed out in our preliminary determination letter of August 26, 1975, were unrecoverable due to the Statute of Limitations. Our review of the material contained in your agency's response of January 23, 1976, has not revealed any discussion of documentation directed at resolving the matter of the $152,278 questioned by the auditors. Therefore, your agency must refund the sum of $152,278 to the Office of Education.

Continuing Weaknesses in SEA Review Procedures—$96,454

The auditors' review disclosed that although information appearing on the face of various project applications revealed that some schools were ineligible to participate, your agency's project application review procedures continued to permit the selection for participation in the Title I program of schools which were ineligible. The auditors cited the following examples:

McKeesport LEA—$50,815

The auditors found that the McKeesport LEA indicated that the entire district qualified as a target area in Fiscal Years 1972 and 1973. However, the percentage of children from low-income families in the various attendance areas of the district ranged from 8.5 percent to 33.9 percent in FY 1973, and from 2.29 percent to 27.6 percent in FY 1972. Your agency had established criteria which stated that in order for a school district to designate all schools as part of a target area, the percentage of children from low-income families in each school should not vary by more than 8 percent. McKeesport was not eligible to use this method, and its officials stated that the entire district was considered a target area because of the desegregation plan implemented by the LEA.

The LEA response, included in your agency's January 23, 1976, submission, provides no additional relevant data on this matter. Your agency's response seeks to justify the LEA's action by citing page 17 of *Title I, ESEA: Selecting Target Areas, Handbook for Local Title I Officials*, which states, "*children who reside in eligible attendance areas* but by specific arrangement because of desegregation, attend schools serving ineligible areas, may be considered for participation in the Title I program in the integration plan has been terminated" (emphasis supplied). This statement clearly applies only to provision

of services for specific children from eligible attendance areas and cannot be utilized as a basis for designating all schools in the district as eligible attendance areas without constituting a violation of Section 116.17(c) and (d) of the Title I regulations. It should also be pointed out that the "follow-the-child" modification of the clearly stated target area selection process was clarified in OE Program Guide # 44 dated March 18, 1968, and Program Guide #65 dated January 21, 1970. We, therefore, support the auditors' finding and recommendation, and your agency must refund the sum of $50,815 to the Office of Education.

Allentown LEA (FY 1973)—$45,639

The auditors' review disclosed that the Allentown LEA indicated on its FY 1972 and 1973 applications that 15 schools were ineligible but requested approval to provide reading services to 15 children in each of the ineligible schools since these children resided in target areas but were bussed to nontarget schools to achieve desegregation. Your agency approved the plan but only to serve children who lived in the target areas. The auditors visited the LEA and found that only 34 of the 236 students bussed in from target areas participated in the Title I program. These 34 students represented only 11.26 percent of the 302 total enrollment in the Title I reading program at nontarget schools. The auditors questioned that portion of the total expenditures which accrued to the benefit of ineligible students. Your agency's latest response attempts to stress the idea that the LEA was required by the State Human Relations Commission, and permitted by Program Guide # 64, to follow the bussed children with Title I services. This Office does not challenge this contention with regard to the 34 children identified by the auditors as educationally deprived residing in eligible attendance areas. However, neither your agency nor the LEA has been able to present an adequate justi-

fication for serving the remaining exceptionally high number of students who attended a nontarget school and resided in a nontarget area thereby violating Section 116.17 (a) of the Title I regulations. In the absence of information or documentation adequate to justify the services provided to these ineligible students, your agency must refund the sum of $45,639 to the Office of Education.

The auditors also mentioned problems with target area selection procedures in the Armstrong, Bentworth, and Albert Gallatin LEAs to which you agency made no specific response. We support the auditors' recommendation that your agency: (1) place additional emphasis on review and evaluation of schools selected by LEAs for participation in the Title I program, and (2) establish procedures to continuously monitor Title I activities to assure that programs are conducted only at eligible schools in a manner consistent with Title I regulatory mandates.

Enclosure No. 2

PROCEDURE FOR HEARINGS ON APPEAL OF FINAL AUDIT DETERMINATIONS

If, upon review of our final determinations, your agency wishes to appeal any of our decisions, you may request a hearing. Your request for such a hearing must be postmarked not later than 30 days after the postmark date of our letter of final determinations, except when the Chairman of the Office of Education Title I Audit Hearing Board grants an extension of time for good cause shown. The request for hearing is to be addressed to:

Chairman, Title I Audit Hearing Board
Office of the U.S. Commissioner of Education
U.S. Office of Education
Room 4003
Federal Office Building # 6
400 Maryland Avenue, S.W.
Washington, D.C. 20202

The detailed procedures for submitting a request for hearing, and for the processing and disposition of each such request by the Hearing Board, are set forth in the attached Notice as published in the *Federal Register*, Volume 37, No. 208, on October 27, 1972.

Attachment

Office of Education

AUDIT HEARING PROCESS

Establishment of Title I Audit Hearing Board

Pursuant to the authority contained in sections 201 and 204 of Reorganization Plan No. 1 of 1939 (4 F.R. 2728, 53 Stat. 1424), as amended by section 5 of Reorganization Plan No. 1 of 1953 (18 F.R. 2053, 67 Stat. 631), 20 U.S.C. 2; title I of the Elementary and Secondary Education Act, 20 U.S.C. 241a; and section 434 of the General Education Provisions Act, formerly section 424 of the General Education Provisions Act, 20 U.S.C. 1232c as redesignated by section 301(a) of the Education Amendments of 1972, there is hereby established within the Office of Education a title I Audit Hearing Board as set forth below from which Audit Hearing Panels will be selected for the purpose of reviewing and providing hearings upon final audit determination made in the administration of title I of the Elementary and Secondary Education Act programs by the Office of Education.

The Department of Health, Education, and Welfare is currently studying the establishment of a Department-wide mechanism for consideration of grantee appeals from audit and other administrative determinations which may be applicable to audit determinations under title I. In view of the current pendency of a substantial number of audit reports and determinations (some involving relatively large amounts of funds) under title I, it is necessary and appropriate that a procedure for finally resolving these pending audit matters be established at this time.

NOTICES

Office of Education Title I Audit Hearing Board

Sec.

1. Scope.
2. Definitions.
3. Audit Hearing Board; Audit Hearing Panel.
4. Determinations subject to the jurisdiction of the Board.
5. Submission.
6. Effect of submission.
7. Substantive and procedural rules.
8. Hearing before panel or a hearing officer.
9. Initial decision; final decision.
10. Separation of functions.

Section 1—*Scope.* This notice applies to final audit determinations made by the Office of Education after June 30, 1971, with respect to programs funded under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e). For the purpose of this notice, an audit determination by the Office of Education shall be considered final only after the grantee has been provided an opportunity to comment on a preliminary audit determination and has been notified in writing that a final audit determination has been made with respece to the matters included in such preliminary determination.

(20 U.S.C. 241a 1232c)

Sec. 2—*Definitions.* For purposes of this notice—

(a) "Board" means the Office of Education Title I Audit Hearing Board, as described in paragraph (a) of section 3.

(b) "Board Chairman" means the Board member designated by the Commissioner to serve as Chairman of the Board.

(c) "Panel" means an Audit Hearing Panel, as described in paragraph (b) of section 3.

(d) "Panel Chairman" means a member of an Audit Hearing Panel who has been designated as Chairman of such Panel by the Board Chairman.

(e) The terms "Department" and "Departmental" refer to the Department of Health, Education, and Welfare.

(f) "Commissioner" means the U.S. Commissioner of Education.

(g) "Grantee" means a State educational agency to which payments have been made under section 143 of the Elementary and Secondary Education Act.

(h) "Title I" means Title I of the Elementary and Secondary Education Act (20 U.S.C. 241a).

(20 U.S.C. 241a, 1232c)

SEC. 3—*Audit Hearing Board; Audit Hearing Panel.* (a) There is established, within the Office of the Commissioner, an Office of Education Title I Audit Hearing Board the members of which shall be designated by the Commissioner to perform the functions described in this notice. Subject to the limitations set forth in section 10 of this notice, persons who are officers or employees of the Department or of its constituent agencies as well as other Federal officers or employees may serve on the Board. Persons who are not otherwise full-time employees of the Federal Government may, in accordance with appropriate arrangements, also be asked to serve on the Board. Service on the Board may be on a regular or an intermittent basis.

(b) The Commissioner shall designate one of the members of the Board to be Chairman. The Board Chairman shall designate Audit Hearing Panels for the consideration of one or more cases submitted to the Board. Each

such Panel shall consist of not less than three members of the Board. The Board Chairman may, at his discretion, constitute the entire Board to sit as a Panel for any case or class of cases. The Board Chairman shall designate himself or any other member of a Panel to serve as Chairman.

(20 U.S.C. 241a, 1232c)

SEC. 4—*Determinations subject to the jurisdiction of the Board.* (a) Subject to section 5 and paragraph (b) of this section, the Board shall have jurisdiction in those cases in which a grantee under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e et seq.) has been notified in writing that a final determination has been made by the Office of Education that an expenditure not allowable under the grant has been made by the grantee (or by a subgrantee to which it has made a payment under Title I) or that the grantee (or such subgrantee) has otherwise failed to discharge its obligation to account for grant funds.

(b) A determination described in paragraph (a) may not be considered by the Board unless the Deputy Commissioner for School Systems of the Office of Education has notified the grantee in writing of such determination. A notification described in the preceding sentence shall set forth the reasons for the determination in sufficient detail to enable the grantee to respond and shall inform the grantee of his opportunity for review under this notice. In the case of final audit determinations made prior to the effective date of this notice, the Deputy Commissioner for School Systems may designate those notifications which have previously been made to grantees and which he deems to comply with this paragraph. Upon receipt of notice of such a designation, the grantee shall be deemed to have received a notification for purposes of this paragraph.

(20 U.S.C. 241a, 1232c)

SEC. 5—*Submission*—(a) Application for review. (1) A grantee with respect to whom a determination described in section 4 has been made and who desires review may file with the Board an application for review of such determination. The grantee's application for review must be postmarked no later than 30 days after the postmark date of notification provided pursuant to section 4(b) except when the Board Chairman grants an extension of time for good cause shown.

(2) Although the application for review need not follow any prescribed form, it should clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position. The grantee shall attach to his submission a copy of the agency notification described in section 4(b).

(b) *Action by Board on application for review.* (1) The Board Chairman shall promptly send a copy of the grantee's application to the Deputy Commissioner for School Systems.

(2) If the Board Chairman determines, after receipt of an application for review, that the requirements of section 4 have been satisfied, he shall promptly refer the application to an Audit Hearing Panel designated pursuant to section 3(b) for further proceedings under this part. If he determines that such requirements have not been met, the Board Chairman shall return the application to the grantee with reasons for its rejection.

(20 U.S.C. 241a, 1232c)

SEC. 6—*Effect of submission.* When an application has been filed with the Board with respect to a determination, no action will be taken by the Office of Education with respect to the collection of the amount determined to be owing pursuant to such determination until such appli-

cation has been disposed of. The filing of the application shall not affect the authority which the Office of Education may have to initiate proceedings under section 146 of Title I.

(20 U.S.C. 241a, 1232c)

SEC. 7—*Substantive and procedural rules*—(a) *Substantive rules.* The Panel shall be bound by all applicable laws and regulations.

(b) *Precedural rules.* (1) With respect to cases involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each part to the proceeding an opportunity for presenting his case at the option of the Panel (i) in which or in part in writing or (ii) in an informal conference before the Panel which shall include provisions designed to assure to each party: (*a*) sufficient notice of the issues to be considered (where such notice has not previously been afforded) and (*b*) an opportunity to be represented by counsel.

(2) With respect to cases involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party an opportunity for a hearing, which shall include, in addition to provisions required by paragraph (b) (1) (ii), provisions designed to assure to each party the following:

(i) A transcript of the proceedings;

(ii) An opportunity to present witnesses on his behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(c) *Intervention by third parties.* (1) Interested third parties may, upon application to the Board Chairman, intervene in proceedings conducted under this notice. Such application must indicate to the satisfaction of the Board Chairman that the intervenor has information relative to

the specific issues raised by the final audit determination, and that such information will be useful to the Hearing Panel in resolving those issues.

(2) When third parties are given leave to intervene in accordance with subparagraph (1) above, such parties shall be afforded the same opportunities as other parties to present written materials, to participate in informal conferences, to call witnesses, to cross-examine other witnesses, and to be represented by counsel.

(20 U.S.C. 241a, 1232c)

SEC. 8—*Hearing before Panel or a hearing officer.* A hearing pursuant to section 7(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 241a, 1232c)

SEC. 9—*Initial decision; final decision.* (a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon, for submission to the Commissioner. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions upon which such decision is based and these findings and conclusions shall be incorporated in the initial decision.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party and intervenor, or his counsel, with a notice affording such party an opportunity to submit written comments thereon to the Commissioner within a specified reasonable time.

(c) The initial decision of the Panel shall be transmitted to the Commissioner and shall become the final decision of the Commissioner, unless within 25 days after the expiration of the time for receipt of written comments,

the Commissioner signifies his determination to review such decision.

(d) In any case in which the Commissioner modifies or reverses the initial decision of the Panel, he shall accompany such action by written statement of the grounds for such modification or reversal, which shall promptly be filed with the Board. Such decision shall not become final until it is served upon grantee involved or his attorney.

(e) The authority to review initial decisions shall not be delegated. Review of any initial decision by the Commissioner shall be at his discretion and shall be based upon such decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties to the proceeding, or by their counsel.

(20 U.S.C. 241a, 1232c)

SEC. 10—*Separation of functions.* No person who participated in prior administrative consideration, or in the prepartion or presentation of a case submitted to the Board shall advise or consult with, and no person having an interest in such case shall make or cause to be made an ex parte communication to the Panel, Board, or the Commissioner with respect to such case, unless (1) all parties to the case are given timely and adequate notice of such advice, consultation, or communication, and (2) reasonable opportunity to respond is given all parties.

(20 U.S.C. 241a, 1232c)

Effective date. This notice shall become effective 30 days after the date of its publication in the FEDERAL REGISTER.

Dated: September 27, 1972.

S. P. MARLAND, Jr.,
U.S. Commissioner of Education.

[FR Doc. 72-18345 Filed 10-26-72; 8:51 am]

[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
225 West State Street
Trenton, N.J.

OFFICE OF THE COMMISSIONER

October 21, 1976

Mr. Robert R. Wheeler
Deputy Commissioner
Office of Education
Department of Health, Education
and Welfare
Washington, D.C. 20202

Re: ACN: 50006-02 (Newark Board of Education, Title I Audit)

Dear Mr. Wheeler:

Enclosed please find the New Jersey State Department of Education's application for review of the "Final Audit Determinations" based upon an audit of Newark Title I programs for the period September 1, 1970 to August 31, 1973. Attached to that application is a copy of the agency notification.

Please note that by a letter dated August 23, 1976, David S. Pollen, Chairman of the Audit Hearing Board granted this agency an additional 60 Days in which to prepare and submit documentation to support its request for a hearing.

Sincerely,

/s/ Fred G. Burke
FRED G. BURKE
Commissioner

Attachments

NEW JERSEY DEPARTMENT OF EDUCATION
APPLICATION FOR REVIEW
OF FINAL AUDIT DETERMINATION
BASED ON ACN: 50006-02

October 21, 1976

INTRODUCTION

This is an application by the New Jersey Department of Education (State) for a review of final audit determinations of the Office of Education (OE) of the Department of Health, Education and Welfare dated June 11, 1976 and received by the State on June 28, 1976. The conclusions expressed in that communication were based largely on an audit of the use of funds in Newark appropriated under Title I of the Elementary and Secondary Education Act, 20 U.S.C. 241a *et seq.*, during fiscal years 1970-1973. The State expressed its desire to take an appeal from those determinations, and a hearing was requested pursuant to 45 C.F.R. 16 *et seq.* by a letter dated July 22, 1976. Appendix A.

The audit report on which OE's final determination was based was received by the New Jersey Commissioner of Education on October 21, 1974. The auditors recommended that the State refund Title I funds in excess of $1.1 million which were spent on schools allegedly ineligible to receive funds under federal law in the school years 1970-71 and 1971-72. The auditors asserted generally that the local educational agency (LEA) had misclassified as eligible a number of schools that did not satisfy the requirements of Title I regulations and that the state educational agency (SEA) had failed to act to prevent such improper use of program funds.

The State's initial response, dated December 10, 1974, provided an answer based on such data as were available. Thereafter, a meeting was held on November 19, 1975 between HEW and representatives of SEA. Neither the individuals who prepared the answer of December 10, 1974 nor those who met at HEW are now employed by SEA. Therefore, the State was under a considerable disadvantage when it filed its final response to the audit on May 7, 1976. It had been provided with no record of what transpired at that meeting. OE had also failed to furnish documentation which formed the basis of one audit exception. Since so much of the final determination is

couched in conclusory language, the State is still unable to make a meaningful response. By contrast, OE has been supplied with all relevant documentation at the State's disposal.

The final audit determination, requesting the return of $1,161,917 was based upon three specific audit exceptions: (1) expenditures by an allegedly ineligible school (Lafayette Street School) in school year 1970-71 ($91,266); (2) expenditures by ten schools not listed on the 1970-71 application ($41,201); and (3) expenditures due to identification of Title I target areas through an allegedly impermissible formula ($1,029,630). Each of these exceptions will be considered in some detail later in this application for review. However, it is sufficient to note here that the State, in its final response to the auditors, provided a recalculation for the supposedly ineligible schools for 1971-72 (the exception for which comprises the far greater part of the total amount requested). The formula used for that recalculation was permissible under regulations existing at the time of the application, and the accuracy of the statistics used is not challenged by OE. In short, there has never been as satisfactory rebuttal provided to the recalculation.

From this brief review of the history of this audit and application for review, as well as the contents of the preliminary audit report and final determinations, it is apparent that the State has been severely disadvantaged in its attempts to provide specific responses to each allegation. Also prejudicial to the State's effort is the passage of time taken between steps by the federal agencies. The State is faced with the task of meeting conclusions—some only partially supported by documentation, others supported not at all—based upon allegations contained in an audit report completed more than two years ago. The LEA applications containing the material commented upon in that report were completed, respectively, five and six years ago. It should also be noted that SEA officials attempted to administer those programs in the face of a con-

fusing, and often conflicting, mix of federal regulations and pronouncements.

Beyond the procedural objections stated above, the State is determined to defend the educational needs of the school children of Newark and to show the validity of Newark's Title I program during fiscal years 1970-73. Since the OE rebuttal to the State's last response is largely unsatisfactory, it is compelled to restate many of its objections to the preliminary audit report. In doing so, the State is confident of its ability to demonstrate the propriety of its actions and that it fulfilled its statutory mandate under both existing federal guidelines and the local conditions to which those guidelines were applied.*

DISCUSSION

It appears that OE has accepted virtually all of the conclusions arrived at by the auditors. Therefore, this application must be one for review of that audit report as well as of OE's final determinations. But before each specific finding is answered, it is essential that the circumstances surrounding the Title I program across the state and the general economic climate in Newark during the subject years be described.

Some of the difficulties uncovered by the audit were no doubt engendered by some degree of confusion in the administration of the program at all levels. State and local agencies were faced with conflicts between federal statutes and regulations governing the program and informal administrative pronouncements periodically issued to interpret them. During this early phase of Title I, there was a complete absence of clear regulations. Discrepancies between those existent have been well-documented elsewhere

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* OE has never informed the State of the basis for its refund request although repeatedly asked to do so. The State is confident that it will prevail in this application, and therefore will not address the question of refunds at this time. However, it is aware of no authority for this refund procedure and reserves its right to challenge OE's authority to employ it at a later date.

and are thoroughly familiar to educators at the federal level.

The version of Title I which confronted the Newark LEA at the beginning of the 1970 and 1971 school years, through its lack of specificity, added to the confusion that attended the implementation of the law. It contained no clear definition either of the type of child Title I funds were to serve or the type of area to which they were to be applied. Federal regulations adopted pursuant to the Act provided some guidance, but were still lacking in specificity. For example, 45 C.F.R. 116.1 (i) defines "educationally deprived children" as:

> ". . . those children who have need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age. The term includes children who are handicapped or whose needs for such special educational assistance result from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large."

and 45 C.F.R. 116.1(v) defines "project area" as:

> ". . . the attendance area, or combination of attendance areas, having a high concentration of children from low-income families which, without regard to the location of the project itself, is designated as the area whose children are to be served by the project . . . ."

Neither the statute nor these regulations in effect during the relevant fiscal years sets forth precise criteria to be considered by an LEA in determining whether a child qualifies as "educationally deprived" and whether a project area contains a high enough percentage of low-income children so that it might be considered eligible.

The HEW audit agency apparently based its findings on AFDC data that OE, in its final audit determination, admitted were incomplete because they did not reflect the

total number of low-income families with school-aged children in the district. One suggestion for dealing with such unsatisfactory statistical information, offered by Harold Howe, U.S. Commissioner of Education, in the *ESEA Title I Program Guide #44*, was addressed to the chief school officers of all states:

> "In some cases, income data are not available or are out-of-date and the number of children from low-income families will need to be estimated on the basis of the number of such children who are receiving Aid to Families with Dependent Children (AFDC) or who are receiving free lunches. *Housing, health, or employment statistics may also be used in estimating the number of children from low-income families in each attendance area. . . .*
>
> Normally the attendance units should be ranked according to percentages of low-income families. . . . If necessary for reasons of equity the attendance units determined to have high concentration of low-income families may include some areas ranked on one basis and some on the other."
> (Emphasis added).

Eschewing complete dependence on such incomplete data, local Title I coordinators fell back on their own assessment of the needs of their districts and the locations of low-income populations. To a great extent, the Newark LEA depended on this practice, which was expressly approved of by Commissioner Howe in a letter dated February 27, 1967:

> "The degree of concentration from low-income families may be estimated, if better data are not available, on the basis, of the number or percentage of children from low-income families actually attending each of the schools being operated by the applicant local educational agency." (Emphasis added).

Other OE communications as well recognized the probable need for estimating data. In "The Schoolman's Guide

to Federal Aid, Part II. Implementation of Projects," reprinted from the December 1965 issue of *School Management* and distributed to all superintendents in January 1966, the director of program operations in OE's Bureau of Elementary and Secondary Education said the following about the problems in data collection:

> "Schoolmen shouldn't be struck with inaccurate data—and they are not. They can conduct their own poverty census and *they don't have to stick with the $2,000 income factor.* They can use some other factor, or factors, that serve their purpose better. For example: How many families have incomes under $4,000 a year? They can go to the welfare agency and find out how many children are on welfare programs. Even housing data will give valid clues. *All* of this type of data can give a valid index of poverty.
>
> If accurate information, even of this type, is not available for some schools, or for some attendance area, the superintendent can meet with the school principal and other personnel, put together whatever information they have and come up with a *pooled judgment* as to the schools with the highest concentrations of children from low-income families. This is acceptable but I want to stress that it should be used *only* as a last resort.
>
> For example, in order to qualify for participation in a Title I project, a school's attendance area must show a percentage of children from low-income families that is at least as high as the over-all percentage for the district. This is causing some trouble because administrators are finding that some of their concentrated pockets of poverty are in schools that do not, using available statistics, show a relatively high *percentage* of low-income children. In this situation the pooled judgment of the district's staff could be used to show that this particular school qualifies for

participation in a Title I program." (Emphasis original).

Also critical of OE's use of *only* AFDC as a determinant of eligibility is Report No. 93-805 on the Education Amendments of 1974 by the House Labor and Education Committee, which stated:

> "The committee bill has reduced the use of AFDC counts for distributing Title I funds because of the inequitable distribution of funds which has resulted in the last several years and also because we believe that the AFDC program in its present state does not provide accurate or reliable statistics on poverty throughout the country. Federal administrators of the program concur in this conclusion since they appeared before the committee and urged that AFDC statistics not be used for distributing funds." 1974 U.S. Code Cong. & Admin. News 4101.

The reason for this sudden loss of confidence was the realization that the welfare program left in the state a wide discretion to decide who is eligible and the amount of assistance granted to each such individual.

In addition, in a letter * dated June 14, 1974, to the New Jersey Title I Coordinator, Richard L. Fairley, Director of OE's Office for the Disadvantaged, recommended that the state agency instruct LEA's that besides primary source data (AFDC, census), weight should also be given to such secondary source data as unemployment and health statistics, school lunch data, and school surveys.

That this was done for the subject years is borne out by the Newark LEA applications, which evidence a conscientious effort to locate areas which had a high concentration of children from low-income families on the basis of the best information *then* available. For example, the 1970-71 application shows that the following factors,

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* See Appendix B, page 7.

all of which were approved of as criteria by OE, were utilized:

1) AFDC statistics supplied by the Essex County Welfare Board

2) Free lunch and free breakfast programs

3) Model Cities data

4) Housing statistics

5) Bussing of children from areas with high concentration of foreign-born and non-English speaking children

6) Health survey and statistics on school-age children.

In addition, Newark conducted its own survey to gauge the need for Title I-type aid. The Interim Progress Reports, Newark BOE Title I by Planners Associates, Inc. indicated that a large segment of Newark's school-age population fell below national norms in reading and mathematics. For example, a city-wide test administered in October 1969 indicated that an average of 80 out of 100 third-graders fell below the national norms. Among sixth-graders, the below average rate fell to 90 out of 100. Reported data also showed that a majority of children in *all* of the project areas suffered from at least one of the following educational handicaps:

1) insufficient knowledge of English

2) poor speech patterns

3) lack of an ability to communicate verbally with others

4) low levels of aspiration and self-esteem

5) health, home and cultural handicaps

With all of this considered, the reported AFDC District-wide low-income percentage for 1970-71 (25.5) is but a poor reflection of the conditions in Newark at that

time. It ignores in particular the aforementioned conditions and statistics considered by LEA and gathered from a variety of sources as well as the severe conditions of overcrowding in the elementary schools. Of the 82,314 children registered in Newark public schools during school year 1969-70, a majority, 51,886, were in grades kindergarten through sixth. As has been acknowledged often by educators, class size can be an excellent indication of the caliber of education.

Statistics cited in the 1971-72 Title I application are even more indicative of the climate of both the schools and the economy of Newark. They show a jobless rate for the previous year of 14 percent, a rate double that needed to qualify under the Economic Development Act. Another 35,000 residents were earning $3,000 per year or less. And in 1971, the Model Cities program in Newark was expanded to include the entire city.

Other data further dramatize the situation in the city. Newark was then second only to Washington, D.C. in percentage of black population (54.2). Another 11 percent of the population was of Hispanic background. The city also had the highest percentage of slum housing in the nation, the highest incidence of crime, and the second highest birthrate.

One other statistic was especially considered by the local administrators and serves to show the inherent unreliability of any count of the city's low-income population. Newark had in 1970-71 the highest population turnover in the nation. Model Cities data indicate that mobility rates reached as high as 80 percent for schools in the Title I area. For this reason alone, LEA had no choice but to assume high concentrations of low-income families in all attendance areas and to attempt to spread the benefits of Title I as broadly as possible to assure that most educationally deprived children would be served. Indeed, the type of Title I project ultimately developed was tailored to such a mobile population.

Then, as now, the city was faced with imminent bankruptcy. The entire school system was overburdened and hardly able to maintain the quality or quantity of services that would ameliorate the learning, health, and nutritional problems of its school children. Schools with relatively less disadvantaged students hardly had more opportunity to satisfy these needs.

It is also apparent that under the meaning of the Act and its scope, which Congress intended to have been broad, the whole of Newark could have been considered a Title I area.

In the 1965 House Committee Report on Public Law 80-10, later to become the Elementary and Secondary Education Act, it was said:

> "Under the terms of the legislation, a local public school district may use funds granted to it for the broad purpose of programs and projects which will meet the educational needs of educationally deprived children in those school attendance areas in the district having high concentrations of children from low-income families. It is the intention of the proposed legislation not to prescribe the specific types of programs or projects that will be required in school districts. Rather, such matters are left to the discretion and judgment of the local public educational agencies since educational needs and requirements for strengthening educational opportunities for educationally deprived elementary and secondary school pupils will vary from State to State and district to district. What may be an acceptable and effective program in a school district serving a rural area may be entirely inappropriate for a school district serving an urban area, and vice versa. *There may be circumstances where a school system is basically a low-income area and the best approach in meeting the needs of educationally deprived children would be to upgrade the regular program.* On the other hand in many areas the needs of educationally deprived chil-

dren will not be satisfied by such an approach." 1965 U.S. Code Cong. & Admin. News 1454 (emphasis added).

The 1966 House Committee Report on amendments to Title I noted local problems in determining where and how Title I funds should be used in meeting the objectives of the program. The Committee repeated that Title I programs were to be designed at the local level and that the program was to be administered flexibility:

> "*We specifically pointed that there may be circumstances where a whole school system is basically a low-income area and in which the best approach might be to upgrade the whole school system.* The first year programs involving a general upgrading of whole school systems were discouraged by the Office of Education. The construction of facilities to house Title I programs was permitted only sparingly. This restricted approach was necessitated by limited funds. In the next two years, especially in fiscal year 1968, more funds will be available and more children will be included in Title I programs. It is expected that more general upgrading of school systems and more construction will be permitted. *It is the feeling of the committee that when 30 or 40 percent of the children in the district are from low-income families, all of the children in the district could be considered disadvantaged and the whole school system could be upgraded.*" 1966 U.S. Code Cong. & Admin. News 3846 (Emphasis added)

As has already been demonstrated, the Newark school system was one uniformly disadvantaged both educationally and economically. In school year 1971-72, AFDC data, which, if anything, understated the level of poverty in the district, showed a low-income percentage of over 33 percent, a level above that recommended by Congress in 1966 as one that should qualify the entire district as disadvantaged. Even the federal regulations applicable

that year, and so often cited in the preliminary and final audits, recognized that an entire school district could be considered a project area:

> ". . . *In certain cases, the whole of a school district may be regarded as an area having a high concentration of* [*children from low-income families*] *and be approved as a project area*, but only if there are no wide variances in the concentrations of such children among the several school attendance areas in the school district." 45 C.F.R. 116.17(d) (emphasis added)

With these regulations and pronouncements before them, Newark school administrators proceeded to try to determine the appropriate target areas. It is apparent that their program as a whole met the Title I requirements in serving educationally deprived children, who were demonstrated to have been both highly concentrated throughout Newark and highly mobile among attendance areas.

In fact, there is every indication that Newark was precisely the kind of school district for which the Act was written. The House Committee Report on the Title I amendments of 1974 notes that two types of districts should especially be the targets for Title I funds: 1) districts which are exerting a great tax effort and have a minimal tax base and 2) districts where education costs more because of expensive programs (such as bilingual programs) or because of student transiency in the district as a whole. Newark certainly qualifies as a district of the first type. Its tax base has been rapidly shrinking, and Newark taxpayers have traditionally been burdened with the State's highest property tax rate. The rate of transiency has already been noted. As for the demands for bilingual education in the district, an informal survey completed in October 1969 showed that 12 out of the city's 29 elementary schools had a non-English speaking population of 14.4 percent or more. Since then, there has been a rapid influx of Spanish speaking people.

All of the foregoing indicates that the Newark program as a whole was clearly designed to serve not the general educational needs of the area, but "the special needs of children from low-income families" and to counteract "the impact the concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs." 20 U.S.C. 241(a). Indeed, no statement made in either the preliminary audit or final determination alleges that these purposes were not served.

One other thread of criticism which runs through the preliminary audit deserves some comment. The auditors repeatedly suggested that although the allegedly improper procedures in Newark ceased after school year 1971-72 and there was every indication that eligibility determinations for 1972-73 were properly made, there was no documentary evidence that this resulted from SEA action. Pronouncements from OE itself give lie to these assertions. In fact, so strenuous were SEA's efforts at compliance during these years that, by 1973, OE could characterize the newly instituted revision and application procedures as "exemplary." *

As early as April 1971, Sidney P. Marland, Jr., then U.S. Commissioner of Education expressed deep appreciation for the conscientious efforts being made by the State to correct deficiencies in the administration of Title I.** By June 7, 1971, SEA could demonstrate that numerous OE suggestions relative to the personnel, evaluation, and regulatory areas had been implemented.*** The process of administrative reorganization was essentially culminated by 1974. In a letter dated June 14th of that year, Richard L. Fairly, Director of OE's Division of Education for the disadvantaged, could report the following programs in these areas:

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* Appendix B, page 1.

** Appendix C, page 2.

*** Appendix D.

1) Fiscal management—the State had instituted satisfactory procedures, all consistent with federal guidelines, to maintain fiscal control and integrity.

2) Monitoring—the process in New Jersey was recognized as well above average.

3) Target area selection—state guidelines were entirely consistent with federal regulations.*

Thus, during the period of the audit, correspondence with OE indicates that SEA efforts at compliance with federal regulatory mandates were consistently praised and that State administrators were led to believe that they had cured all of the alleged insufficiencies. At the same time, OE staff summoned SEA employees to Washington to extract from them admissions that would later be used in the audit. The unfairness in this is evident.

In sum, given SEA administrative budget for these early years and the overwhelming confusion at all levels of regulation, it is hardly surprising that the State was in no position to monitor the implementation of the program in more than 500 school districts and that there may have been violations of a technical nature. The State was hard-pressed and thus forced to rely heavily on project applications, evaluations and periodic visits. With all this, it still must be stressed that the violations cited were only technical ones. That which was done in Newark was entirely consonant with the intent of the drafters of the Act and the spirit of the legislation itself. There are no allegations that economically and educationally deprived children were not served or that monies were diverted for illegal purposes.

The State believes that it has amply demonstrated that the Newark project as a whole met the requirements of Title I and that any further OE action with respect to the program in school years 1970-71 and 1972-73 is im-

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* Appendix E, pages 3-5.

proper. However, in view of OE's continued insistence that Newark failed to comply with Title I requirements in those years, each audit exception will be considered individually.

I. REFUNDS REQUESTED AS A RESULT OF PAYMENTS TO ALLEGEDLY INELIGIBLE SCHOOLS (1970-71)

As a result of the audit of documents for the 1970-71 school year, OE requests the return of $91,266 in Title I program funds spent by Lafayette Street School and $41,-021 in expenditures by ten other schools.

Initially, the State asserts that OE is barred from recovery of any expenditures made during the 1970-71 school year should they prove to have been unauthorized. 20 U.S.C. 884 provides:

> "No State or local educational agency shall be liable to refund any payment made to such agency under this Act (including Title I of the Act) which was subsequently determined to be unauthorized by law, if such payment was made more than five years before such agency received final written notice that such payment was unauthorized."

This five-year statute of limitations was adopted to encourage HEW to make audits more promptly than had been the case and to remove the threat on school administrators of liability for payments received many years before.

By "final written notice" is meant the final determination of an intention to collect, communicated by OE to an SEA after its officials have met with HEW to discuss the preliminary audit exceptions. *Report of the House Education & Labor Committee*, Feb. 21, 1974, 1974 U.S. Code Cong. & Admin. News 4060-61.

Final written notice of OE's intention to collect was not received at the New Jersey Department of Education until June 28, 1976. Records in SEA's possession show

that it received final notification of the grant award on November 5, 1970 and that all Title I monies for programs conducted during the 1970-71 school year, which were the subject of the audit exceptions, were paid to the SEA before June 28, 1971 (five years before final written notice). Therefore, OE cannot collect on any alleged unauthorized uses of those fiscal 1970 and 1971 fund paid before the above-named date.

Although, as argued above, the Newark program met Title I requirement and, in any case, monies paid in school year 1970-71 cannot be recovered since the statute of limitations had run before OE's final written notice was received, the propriety of expenditures for the programs of that year will still be considered individually.

EXPENDITURES BY LAFAYETTE STREET SCHOOL

The auditors request a refund in the amount of $91,266 for payments made to Lafayette Street School because of its allegedly improper classification as eligible. Although the reported AFDC low-income percentage in this school's attendance area (23.5%) fell two points below the district-wide average, it was included on the basis of other factors, all of which were cited in LEA's 1970-71 application and all of which could be considered under existing regulations. Chief among these were the poor economic climate in Newark at the time and a large concentration of Hispanic and other non-English speaking minorities in that section of Newark. The inherent unreliability in the use of AFDC data is even more apparent in such an area as the one served by the Lafayette Street School. Many of its residents were ignorant of how to become welfare clients or evidenced resistance to signing up for welfare.

Furthermore, an OE review of SEA administrative techniques was not effected until March 17, 1971 and the report of that review not received until July 27, 1971, one year after SEA's approval of the Newark application. As had already been demonstrated, the SEA response to

that review was exemplary. It resulted in dramatic adjustments in the review procedures. See Appendix B. Certainly neither the State nor the local agency is without fault in this matter, but since the confusion of the 1970-71 school year, efficient methods of administration have been developed and implemented.

EXPENDITURES AT TEN OTHER SCHOOLS

The auditors also requested the return of some $41,201 as a result of payments made to ten schools made to schools allegedly ineligible to receive Title I funds. The State can only reiterate its former response to the conclusions arrived at by the auditors with respect to these schools—that it has not yet been afforded access to the documentation on which the audit was based. New Jersey Department of Education personnel who prepared the December 10, 1974 response and the two staff members who participated in the meeting with OE officials are no longer employed in the State Title I agency. The Department has been prejudiced by OE's failure to supply information and unable to prepare a meaningful response to the conclusions of the auditors.

The State has no way of knowing what transpired at the November 1975 meeting. Failure of SEA employees to request workpapers at that time is hardly a reason for OE to ignore repeated requests to do so since then. Such refusal is patently unfair and demeans the quality of the hearing to which the State is entitled.

II. EXPENDITURES REQUESTED DUE TO ALLEGEDLY ERRONEOUS IDENTIFICATION OF ATTENDANCE AREAS (1971-72)

The auditors first complain that the stated method of identification of eligible attendance areas deviated from the regulatory mandates of 45 C.F.R. 116.17(d). They further note that the AFDC statistics used by the LEA were incomplete in that they failed to take into account

eligible children in non-public or special education schools as well as those who had dropped out of school.

If anything, this last complaint, as the auditors admit, would tend to result in an underestimation of the number of AFDC children in each district. The effect of course is to make each LEA figure not reflective of the true level of poverty in each district so that there may have been excluded from the program several attendance areas which would have otherwise qualified.

The auditors also admit that the method ultimately used by LEA in 1971—a method of ranking attendance areas on the basis of the percentage of the number of children from low-income families actually enrolled in each school—was a reasonable alternative under the circumstances. Even in retrospect, this method seems not only a reasonable alternative, given the admitted inaccuracies in the AFDC account, but the only reliable alternative open to the local agency.

As section 1.1.1 of *ESEA Title I Program Guide # 44* indicates, the process of ranking by percentages is one that is *normally* used. It further states that all districts need not be ranked on the same basis—eligibility of some population areas may be determined on one basis, eligibility of others on another. This is precisely what was done. LEA employed available free lunch/breakfast, housing, health and unemployment statistics in a weighted formula in a manner consistent with the basic criteria set down by the Commissioner.

Furthermore, the auditors' characterizations of SEA's response of May 7, 1976 as an "ex post facto justification" based on the same errors "which gave rise to the initial audit exception" is both inaccurate and unfair. The calculations in the May 7 submission clearly indicated a correlation between the entire eligible school population in any given attendance area and the number of children from low-income families residing within that area. Although that was made clear in the SEA answer,

it bears reiteration now. To take but one example, the equation given for Madison School is as follows:

$$\frac{937}{1544 + (2389 \times .341)} = 39.7\%$$

The numerator comprises the total number of children from low-income families from Madison's attendance area; the denominator, the total of the elementary school enrollment *plus* the number of junior high and high school students which that attendance are contributed (i.e., 34.1% of those schools' total population of 2389). The auditors' recalculation, on the other hand, employed only AFDC data for elementary school children, measuring the number of elementary school pupils in each school against the total population of that school. In this case, it is the auditors who have ignored the directives of their own program guide by not employing a comparison the corresponding student populations of the attendance area as a whole.

Apart from that consideration, the State must point out that OE is, on one hand, condemning SEA for allowing a local agency to employ an allegedly improper ratio while, on the other, demeaning SEA's recalculation as an "ex post facto calculation" even though it is on the basis of the very type of formula OE calls for. That this recalculation comes after the fact renders it no less valid as a justification. The figures inserted into this revised formula were fully as accurate then as they are now. They serve to demonstrate that even though the formula LEA used may not have conformed exactly to existing federal specifications, the result reached was a just one. It was a result that was calculated to—and did—fulfill the purposes of the federal statute. The goals of Title I, as well as instructions on selection of target areas, were set out in the Title I Program Guide:

> "The purpose of the attendance area requirement is to identify the 'target populations' of children who

> are to be considered for participation in Title I activities on the basis of educational deficiency and the need for special services."

In the final analysis, these ends were furthered by the ultimate distribution of the funds, whatever the target area selection method originally employed. The State believes that the need for Title I funds in these particular areas of Newark, if not in the city as a whole, has been amply justified by the recalculations submitted on May 7 and by the other factors set out in detail throughout this response.

In retrospect, it is easy to criticize the lack of SEA supervision over local programs five years ago. But such criticism does not take into account inherent monitoring limitations and the personnel shortage existent then. Nor does it consider that, by OE's own admission, the monitoring process has significantly improved since.

CONCLUSION

For all of the substantive and procedural reasons just set forth, the State urges that OE's final audit determination on the Newark Title I project be reviewed and that the audit exceptions sustained by OE be overruled.

APPENDIX A

July 26, 1976

Mr. Robert R. Wheeler
Deputy Commissioner
Office of Education
Department of Health, Education
and Welfare
Washington, D.C. 20202

RE: ACN: 50006-02 (Newark Board of Education, Title I Audit)

Dear Mr. Wheeler:

Your letter dated June 11, 1976 containing the Office of Education's final determination concerning the audit of the Newark Title I programs for the period September 1, 1970 to August 31, 1973 was received by the New Jersey State Department of Education on June 28, 1976. It would be appreciated if you could advise us under what authority your office is requesting payment of funds by this Department, since we have been unable to discover any source of such authority ourselves. In the meantime, we wish to preserve our right to a hearing on the final audit determination. On behalf of this Department, I am hereby requesting a hearing pursuant to 45 CFR 16 *et seq.*, which it is my understanding are the federal rules applicable to such a proceeding.

I am aware that these regulations require that this request be accompanied by a statement of the questions which will be the subject of such a hearing, together with "pertinent fact and reasons." As you know, the New Jersey educational system has been operating under extraordinary pressures for the past few months and particularly in the past weeks because of litigation which resulted in our entire system being virtually closed down on July 1, 1976. While the injunction which resulted in this closing has now been dissolved by the New Jersey

Supreme Court, my staff must give priority both to the problems created by that temporary closing and to implementation of the new Jersey Public School Education Act of 1975 which was delayed by the aforementioned litigation. Therefore, it would be appreciated if this agency could be given some time in which to prepare the appropriate documentation to support our request for a hearing. I should note that we continue to be hampered in this matter by our lack of information about the contents of the reports upon which the Newark audit was based, information which we have requested several times.

Sincerely,

FRED G. BURKE
Commissioner

cc: Jane Sommer, Esq.

FGB/gyc/M-8439

APPENDIX B

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION
Washington, D.C. 20202

Jul. 16, 1973

Mr. Jerome Jones
Office of ESEA, Title I
State Department of Education
Trenton, New Jersey 08625

Dear Mr. Jones:

This letter is a follow-up to the New Jersey Title I program review conducted during the week of March 19-23 by William Johnson, Terry Lynch, Edward Smith and Goldia Hodgdon of my staff. The team held extensive discussions with the Title I staff, reviewed selected documents, visited four local school districts, and had a very instructive experience in observing a SEA Title I team visit to one local district. The purpose of the OE team visit, as you know, was to assess the administration and implementation of the New Jersey Title I program with the intent of arriving at an understanding and making recommendations regarding steps to be taken in further strengthening program operations. We were especially interested in the actions that have been taken by the Department following the OE 1972 program review.

We were very pleased to find that the Department's October 6, 1972 response to our review letter of August 8, 1972 was corroborated in almost all instances by the team's findings at the SEA level during the March visit. It is particularly gratifying to be able to point to several critical areas of responsibility and action on the part

of Department personnel which hold promise for exemplary efforts by the State to provide strong leadership for the local school districts. Among those efforts which should be highlighted are: (1) the addition and reorganization of staff, including the provision of staff development opportunities and development of a management system for accomplishing broad objectives and appropriate tasks; (2) the revision of the *SEA Guidelines for Approval of ESEA Title I Program Application* and revision of the application form itself; (3) the development and employment of a comprehensive procedure for on-site visits and follow-up; (4) the formulation and refinement of SEA policy positions on a task force basis, utilizing and coordinating the expertise and experience available from immediate staff, directors of and specialists from other divisions within the Department, selected local Title I coordinators and parents, to a limited extent. While the team's observations during the March visit are generally reflective of the positive steps taken by the SEA since the previous program review, the remainder of this letter will also include observations, findings, and recommendations given for your consideration and action as indicated.

Financial Management, Auditing and Related Matters

Staff additions and reorganization have contributed to furthering the effectiveness of your accounting, disbursement and other fiscal responsibilities. The Department's goal for Fiscal 1973 to perform in-depth audits of 30 Title I programs with emphasis on the districts receiving the largest allocations represents a considerable increase over the nine districts audited during the previous year. The Department's March orientation session on financial auditing procedures for all staff should enhance the efforts of the two accountant auditors in the Division of Administration and Finance who have had to perform an almost impossible job. The 1972 review team's recommendations regarding the addition of at least one audit-

ing position had not been accomplished at the time of the 1973 review visit.

The team was advised during the exit conference that those school districts receiving less than $4,000 allocation were instructed by the SEA to wait until April to submit applications for the use of their Fiscal 1973 funds. Whether this is new or temporary policy, this Office views such instructions as being discriminatory against those districts which want to use their funds but are not allowed to exercise their right to request them at the same time as all other districts. This situation suggests the need for the SEA to examine its staff functions with a view toward providing the necessary technical assistance which would result in the launching of programs during a given school year, rather than leaving the affected LEAs with the options of an abbreviated program for a few months duration or simply carrying over funds for the succeeding school year. Either option does not adequately address the needs of those identified children in need of services during each regular school year.

There are several other options that may be available to the local school districts in question. The SEA could: a) encourage the development of more cooperative projects, given favorable logistical circumstances; b) encourage the use of services of a part-time reading teacher or a tutorial experience for the children; c) provide for the services of a Department helping teacher on a more sustained basis; d) initiate a specially adapted in-service training experience for the regular classroom teachers and one or two para-professionals who have children who have been identified to be in need of supplementary instructional services; or e) provide for a training program for parents to follow through on (at home) instructional techniques they have observed in the classroom.

The recommendations for financial management and auditing concerns are that:

1. The SEA review its widely distributed publication, "Guidelines for Fiscal Management," issued by the Division of Business and Finance, for the purpose of updating if necessary. The latest copy examined by the review team was revised March 1, 1969.

2. The SEA review its policy on the withholding of allocations under $4,000, and inform this Office of rationale and problems attendant to a continuation of this practice; or inform this Office regarding plans for changing this practice, with a full discussion of rationale and problems.

3. The SEA in its expanded technical assistance activities as they relate to auditing, develop a profile of common categories of exceptions and use this in their overall program development activities with LEAs and for development of State policy as indicated.

SEA Policy Development and Parental Involvement

It is our understanding that the involvement of parents in SEA policy issues relative to Title I is limited to parental participation concerns. Even though we are clearly cognizant of the parameters of the Federal requirements regarding parental involvement at the local school district level, it would appear that New Jersey might take a step forward in providing a model for parental involvement for the locals. Such a step would entail a studied consideration of how the State-wide PAC, assuming that it is duly constituted and representative of the local system-wide parent advisory councils, might be more consistently involved in the Department's discussions leading to development of Title I priority and policy issues. In view of what was reported to be a fine working relationship with an unusually active and supportive state-wide PAC, the problems one might anticipate in such an arrangement could be minimized and the spin-off effect, supported by

appropriate and timely dissemination activities, would serve to motivate those local PACs which are experiencing certain growing pains. We are reminded of your recently published *SEA Guidelines for Approval of ESEA Title I Program Application* which are quite explicit on parental involvement requirements, but at the same time our observations in Perth Amboy and a recent visit from a group of Spanish speaking parents from Newark (communicated under separate cover on June 20, 1973) pointed to local problems in carrying out those requirements. We suggest that your own technical assistance efforts for improving parental involvement at the local level could be augmented by what happens at the SEA level and the kind of commitment demonstrated with the State-wide PAC.

The remaining areas of discussion in this letter, with the exception of the section on local site visits, will be undertaken with the acknowledgment that many of the areas of concern discussed at the exit conference in March have been addressed by the Title I staff since that meeting. Our concerns then included aspects of the following areas:

1. application review and approval process;
2. on-site visit and follow-up procedures;
3. staff development process at the LEA level;
4. SEA policy and instructions regarding Title I equipment inventory and disposition of equipment no longer maintained on inventory;
5. observations at the SEA level.

Application Review and Approval Procedure

Your recently published *Guidelines for Approval of ESEA Title I Program Application, Fiscal Year 1974* (subsequent to the March review) is one of the most complete and explicit documents of its kind that we have

seen. That, along with a similarly comprehensive application form and the application review "worksheets" (to be revised no doubt for Fiscal 1974 application) is responsive to the review team's concerns about adequate treatment of support services appropriate for Title I projects; the assessment of needs in determining program priorities; the process by which participants are to be selected; the requirement of measurable performance objectives for project components; the inclusion of the objectives of the previous year's activities in evaluating the project; and the use of the previous year's interim evaluation data for planning the next year's program. Your guidelines on non-public school involvement, preschool and kindergarten programs, and dissemination activities are likewise responsive.

Our recommendations in this area are that:

1. The SEA conduct task oriented workshops for LEA staffs and PAC groups on the new guidelines and application form. We recognize that a first step taken in this direction was the Cherry Hill conference held in May. There you familiarized a limited audience with program requirements and the application form. While we also recognize that Fiscal Year 1974 applications are due shortly, and that it is probable that some revisions will be made for next year (based on the 1973-74 school year experience), we view the two documents as durable and basic information which should be widely disseminated and understood by all who are involved in the Title I program. We anticipate that needs assessment, participant selection, non-public schools, and parental involvement might be some of the more difficult areas requiring special attention.

2. The application review "worksheet" be updated.

3. The evaluators continue their involvement in the review of new applications from the largest dis-

tricts, and hold training sessions for Title I staff to deal with the increased emphasis on performance objectives, needs assessment and evaluation.

On-site Visit and Follow-up Procedures

The SEA has established a comprehensive on-site and follow-up procedure consisting of (1) applying a definite rationale (size of allocation, number of deficiencies noted on the application form, complaints) for determining which LEAs are visited on a priority basis, (2) giving special priority to all LEAs with allocations of $500,000 or more, (3) utilizing report forms for monitoring at the central office LEA level and at the local school level, (4) reporting on SEA visits to LEAs within two weeks of the visit with a request that LEA respond within 15 days. The annual monitoring schedule currently calls for 324 visitations. Helping teachers are responsible for visiting smaller LEAs annually; those LEAs under $50,000 probably will be monitored biennially.

The review team's reading of several SEA monitoring reports revealed thoroughness; and observations of the SEA team on-site in one LEA were positive.

Presently, evaluation personnel participate in monitoring visits to the 14 largest districts and a few others. There is no systematic method for choosing which others the evaluators will visit.

We recommend that the SEA should utilize its rationale sheet for determining priorities in working out a visitation schedule for the evaluators.

The SEA practice of sending expanded teams to the 14 largest school districts for three day monitoring visits insures thorough coverage of central office and project activities. While staff might have sufficient time for the identification of compliance problems and, in most instances, technical assistance activities, the SEA could assure itself of the optimum use of staff time during these

visits by developing a more detailed schedule which provides for identification of problems and the giving of technical assistance.

Staff Development at LEA Level

The new State guidelines are clear and strong on this point. As in all other aspects of program administration and implementation at the local level, the SEA should avail itself of frequent opportunities to participate in and/or observe staff development efforts at the local level.

Title I Equipment Inventory and Disposition

The Title I staff has developed a very instructive section in the new State guidelines on the subject of equipment inventory and disposition of equipment at the local level. At the same time, the SEA should be mindful of the fact that it is responsible for knowing the status of equipment and materials purchases both at the SEA and LEA level. We note that the application form does not require LEAs to report what is on hand. Such data would allow the Title I staff to make more valid decisions about additional requests for equipment and materials purchases.

Local Site Visits by OE Team

There are many factors which often contribute to the variance in program compliance and quality as projected by State guidelines and as effectuated at the local level. By the same token, it is often apparent that State leadership contributes to the implementation of good programs at the local level. In each of the four districts visited by the OE team certain positive features were observed. They include:

1. Elizabeth—efforts to implement a program management system;
2. Camden—the aide/paraprofessional/teacher career ladder concept;

3. Vineland—career ladder concept; program management system; summer school program limited to regular school year participants;

4. Perth Amboy—special institute for Spanish-speaking parents.

With the revised State guidelines and other improved SE Administrative practices already referred to at several points in this letter, we look forward to the resolution of several problem areas observed at local project sites.

Among those problem areas for which corrective action is required are:

1. Elizabeth—a) final resolution of the Instructional and Materials Center problem; b) selection of pre-Kindergarten participants on a "first come first serve basis", rather than those participants demonstrating the greatest need.

2. Camden—a) a realistic realignment of and/or reduction in the Title I administrative staff; b) inadequate needs assessment documentation as it relates to all program components and supportive services; c) confusion on the part of some staff (medical) regarding their roles and function; d) correlation between Winston Camp project and instructional activities; e) program design and scheduling resulting in a high frequency of movement by children back and forth to numerous staff during course of a given day. Some teachers have indicated that they do not have children long enough in order for the Galaxy process to be a meaningful reinforcement technique.

3. Vineland—a) vaguely written objectives not well tied into Project Puppies activities; b) Project Puppies aides and Title I aides at the Max Leuchter School not focusing on problems of the most severely disadvantaged children; speech therapist, nurse, attendance worker not focusing on Title I participants; c) Sacred Heart School (non-public) not involved in planning of mathematics and reading projects currently operating in that school. The principal was also uncertain as to the basis on which participants were selected.

4. Perth Amboy—a) informal, non-systematic approach to selecting of program participants (also a problem in Vineland); b) needs assessment founded on survey of teacher opinions and surveys of opinions of others knowledgeable about education problems in LEA. No objective data used since 1971; LEA staff feels that the 1971 test results have been corroborated by subsequent survey findings.

We would appreciate, within 60 days, a written response to this report with clarification on questions raised and comments on any action taken or planned for implementation of our recommendations.

The review team was encouraged by your action to date and look forward to a continuing relationship that will serve the best interests of the educationally deprived children in New Jersey.

Sincerely yours,

/s/ Richard L. Fairley
RICHARD L. FAIRLEY
Director, Division of
Compensatory Education

[SEAL]

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
Box 911, Harrisburg, Pa. 17126

June 16, 1976

Chairman, Title I Audit Hearing Board
Office of the U. S. Commissioner of Education
U. S. Office of Education
Room 4003
Federal Office Building #6
400 Maryland Avenue, S.W.
Washington, D.C. 20202

RE: Audit of ESEA Title I
July 1, 1967 through June 30, 1973
ACN: 50000-03

Dear Sir:

The Pennsylvania Secretary of Education, John C. Pittenger, has been notified in writing by Deputy Commissioner Robert R. Wheeler that a final determination in the above-captioned matter has been made by the U. S. Office of Education.

By this letter the State Education Department Grantee officially requests that the Audit Hearing Board grant a review of this final determination pursuant to their authority under 20 U.S.C. § 241(e) *et seq.* of Title I of the Elementary and Secondary Education Act of 1965.

It is the opinion of the Pennsylvania Department of Education that there are numerous questions of material fact, the resolution of which requires the testimony of the allegedly offending LEA school districts' administrative personnel.

In addition, there are questions of law and administrative procedure which require the clarification that a hearing, argument and briefing of all the issues would provide.

Supplanting

For example, the HEW auditors have alleged supplanting violations. However, HEW regulations governing the administration of Title I programs do not clearly define supplanting nor do they describe in sufficient detail the nature of the supplanting which would require the SEA grantee to refuse to approve the LEA application and deny Title I operation funds to the local school district.

General Aid

Office of Education *Guidelines*: *Special Program for Educationally Deprived Children* (OE-35079, 1965-66) state that in "schools that are severely depressed and overwhelmingly impacted by educationally deprived children from low-income families, . . . some projects will by their very nature tend to benefit all children in a school whether they are educationally deprived or not." Relying on the aforementioned, certain LEA's structured their Title I programs in ways that have made them vulnerable to unsupported OE allegations of general aid. This situation has left the SEA in an untenable position. The SEA imposed the OE *Guidelines* on the LEA's and now must try to defend itself against OE for using these same Guidelines.

Expenditures at Non-target Schools

The SEA's nationwide are still looking to OE for guidance and clarification of OE's *Program Guide #44*, which supposedly sets forth the procedures to be followed when an LEA is under court or agency orders to desegregate. Absent this clarification for the period in question, the SEA approved programs which followed Title I eligible children from target (segregated) schools to non-target (integrated) schools. To allow OE to repudiate *Guidelines* that were in place at the time is inequitable and arbitrary.

Our detailed and specific responses to issues raised in the Preliminary Audit appear to have been given only the most cursory review by OE. We are, therefore, submitting the detailed responses of the Pennsylvania Department of Education to the Hearing Board in the hope that the matters in dispute will be given the fullest possible review by the Audit Hearing Board. A copy of the final audit report is attached to this letter.

Very truly yours,

/s/ Patricia A. Donovan
PATRICIA A. DONOVAN
Deputy Attorney General
Chief Counsel
Pennsylvania Department of Education

Attachments (2) Detailed Response
Final Audit Determination

cc: Robert W. Wheeler
Deputy Commissioner for
School Systems

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket No.

Civil Action 80-1991

STATE OF NEW JERSEY, DEPARTMENT OF EDUCATION, PETITIONER

v.

SHIRLEY HUFSTEDLER, SECRETARY OF EDUCATION, UNITED STATES DEPARTMENT OF EDUCATION, RESPONDENT

PETITION FOR REVIEW

The State of New Jersey, Department of Education, hereby petitions the Court for review of the final decision of the Secretary of Education dated May 7, 1980, in the Appeal of the State of New Jersey, Docket No. 14-(29-76, Audit Control No. 50006-02, ordering the State of New Jersey to refund to the Secretary of Education the amount of $1,031,304.00.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Petitioner

By /s/ M. Kathleen Duncan
M. KATHLEEN DUNCAN
Deputy Attorney General

Dated: July 3, 1980

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

COMMONWEALTH OF PENNSYLVANIA, PETITIONER

v.

SECRETARY OF EDUCATION, UNITED STATES DEPARTMENT OF EDUCATION, RESPONDENT

PETITION FOR REVIEW

Pursuant to 20 U.S.C.A. § 2851(a) and Rule 15 of the Federal Rules of Appellate Procedure, the Commonwealth of Pennsylvania hereby petitions this Court for review of the final decision of the Education Appeal Board of the United States Department of Education (formerly the Office of Education, Department of Health, Education, and Welfare), ruling that Pennsylvania should refund $422,424.29 to the Department of Education, notice of which was received on July 21, 1980, by letter dated July 16, 1980.

The respondent is the Secretary of Education, U.S. Department of Education, 400 Maryland Ave., S.W., Washington, D.C., 20202.

/s/ Margaret Hunting
MARGARET HUNTING
Deputy Attorney General

/s/ Emogene Trexel
EMOGENE TREXEL
Assistant Attorney General

HARVEY BARTLE, III
Acting Attorney General

Pennsylvania Department
of Justice
16th Floor
Strawberry Square
Harrisburg, PA 17120
(717) 787-5050

September 16, 1980

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

COMMONWEALTH OF PENNSYLVANIA, PETITIONER

v.

SECRETARY OF EDUCATION, UNITED STATES DEPARTMENT OF EDUCATION, RESPONDENT

PROOF OF SERVICE

I, Margaret Hunting, hereby certify that on September 15, 1980, I placed copies of the attached Petition for Review in the above captioned case in the United States Mail, first class, postage prepaid, addressed to the parties who have been admitted to participate in the proceedings before the Education Appeal Board in the Appeal of the State of Pennsylvania, Docket No. 10-(25)-76, Audit Control No. 50000-03, as follows:

Gerald Solomon for Albert Gallatin
99 East Main Street
Uniontown, PA 15401

Martin Horowitz for Philadelphia
Assistant Counsel
School District of Philadelphia
Board of Education
Parkway at 21st Street
Philadelphia, PA 19103

Robert Costello for McKeesport
1106 Lincoln Highway, Suite B
North Versailles, PA 15137

Robert Stefanko for Pittsburgh
Board of Public Education
School District of Pittsburgh
341 S. Bellefield Avenue
Pittsburgh, PA 15213

/s/ Margaret Hunting
MARGARET HUNTING
Deputy Attorney General

Dated: September 15, 1980

TITLE I AUDIT HEARING BOARD
UNITED STATES OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Appeal of:

Commonwealth of Pennsylvania

Title I, ESEA

Docket No. 10-(25)-76

ACN: 50000-03

Ruling on Pre-Hearing Motions

POSTURE OF THE CASE

This appeal was initiated by letter of June 16, 1976 from the Chief Counsel for the Pennsylvania Department of Education ("Appellant") constituting a timely appeal of audit determinations made by the Deputy Commissioner for School Systems of the U.S. Office of Education ("Respondent") in a final determination letter dated May 18, 1976. A pre-hearing conference was convened on January 18, 1977, and a pre-hearing conference statement was issued on February 17, 1977 granting interventions to various local Education agencies and setting forth a schedule of discovery.

In the months following, the parties have exchanged documentation and interrogatories, and conferenced in an attempt to prepare stipulations of fact and to narrow the focus of this proceeding. On August 25, 1977 the parties filed a "Joint Submission" summarizing their efforts to that date. As part of that "Joint Submission" Counsel for the Appellant requested this Panel's permission to file certain pre-hearing motions. Motions were made, briefed in writing by both parties, and argued orally in Washington, D.C. on December 7, 1977. A transcript of that

argument was prepared and corrected by the parties. The Panel accepts the final corrected transcript filed February 28, 1978 by Appellant's counsel as the record of the oral argument.

The Panel has before it two additional communications, one dated January 9, 1978 from Appellant and one dated January 19, 1978 from Respondent. The intervenor local education agencies did not file briefs on the pre-hearing motions, but several indicated support for Appellant's motions, and the remaining intervenors were silent. The Panel presumes that all intervenors are generally supportive of Appellant's motions and for the reasons given by the Appellant.

PRE-HEARING MOTIONS OF THE COMMONWEALTH OF PENNSYLVANIA

Appellant's pre-hearing motions now before the Panel were previously formulated in writing on September 15, 1977, orally on December 7, 1977, and in Appellant's letter of January 9, 1978. This last communication asked the Panel to rule "on the motions and issues raised in our Brief and oral argument". While a number of issues were raised in the Briefs and at oral argument, the Panel considers the following to be ripe for decision at this juncture, and rules thereon as follows.

Motion to Dismiss for Lack of Jurisdiction to Conduct a "Refund" Proceeding

Appellant seeks dismissal of this proceeding on the grounds that neither the Commissioner of Education nor the Audit Hearing and Panel convened to hear this case, has authority to seek a refund of monies expended by the State and local education agencies under a Title I grant from the U.S. Office of Education.

In support of this motion, Appellant cites the lack of a specific provision in Title I authorizing the Commissioner to recover improperly spent Title I monies, and

asserts that the Commissioner's remedies under Title I are limited to a prospective withholding of funds (under 20 U.S.C. 241j or 1232c) and disapproval of applications (under 20 U.S.C. 241f).

Respondent, on the other hand, finds authority for refund proceedings in 20 U.S.C. 1232d which authorizes the Commissioner to make "adjustments on account of overpayments or underpayments, as the Commissioner may determine". Respondent also notes a prior decision on this point, *Texas Migrant Program Appeal*, Docket No. 7-(9)-74, and the fact that previous Hearing Board Panels have found refunds owing in substantial amounts, *Florida*, Docket No. 1-(12)-75 and *California*, Docket No. 3-(14)-75. Finally, Respondent cites 20 U.S.C. 884 which imposes a five year statute of limitations on State or local liability to refund unauthorized Title I expenditures.

The Panel is persuaded that the Commissioner has ample authority to seek refund of monies improperly spent under Title I (among other) grants. Appellant's construction of the statute leads to a most illogical result: the Commissioner must either deny Title I grant funds before any money actually flows to a State, or detect the State's failure to carry out grant assurances in the course of the grant, leaving the Commissioner no recourse to recoup misspent funds upon conclusion of each grant cycle. The Panel finds no evidence that Congress so intended to limit the Commissioner's authority to enforce the proper expenditure of Federal funds, particularly in light of the statute of limitations cited above. If the Congress did not intend the Commissioner to have authority to recover monies one, two, three or four years after termination of a grant, the five year statute of limitation would be rendered a nullity. The Commissioner is not, therefore, in the opinion of the Panel, limited to prospective withholding or offset and may recover funds improperly spent.

Appellant also questions the authority of this Panel to order a refund. This Panel takes a limited view of the jurisdiction granted to it under the terms of the Federal Register Notice establishing a Title I Audit Hearing Board (37 FR 23002 amended by 41 FR 28568). The Commissioner established the Board for the purposes of providing State agencies an administrative forum for the review of final audit determinations made in the normal course of Title I administration. The Board has jurisdiction to review and, where necessary, hold hearings upon final audit determinations only where application for such a review is made by the grantee state agency. When the Board accepts an Appeal, the Office of Education takes no action to collect the audit exceptions until *the Commissioner* has made a final decision on the appeal. The role of the Board (through individual hearing panels) is limited to reviewing the facts, making findings and submitting an *initial* decision to the Commissioner. These decisions only become final when accepted by the Commissioner and made final by him either as submitted or modified by him. Only then does the Office of Education, and not the Board, take action to enforce a decision through refund or otherwise. As such, the Panel finds that it's own authority and jurisdiction do not extend to the question of *how* the Commissioner should go about enforcing his decision (a choice of remedies question), but rather only to advise the Commissioner as to whether the audit exceptions were properly taken.[1]

For all of the above reasons, the Panel denies Appellant's petition to dismiss this proceeding for lack of jurisdiction.

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[1] Appellant may, of course, defeat the jurisdiction of this Panel by withdrawing its appeal. The effect of withdrawal is, in the opinion of the Panel, to reactivate the final audit determination made by the Deputy Commissioner, and to accelerate a process in which the Commissioner will choose how to enforce that audit finding.

Challenge to the Board's Procedures and the Nature of Audit Hearings

Appellant sets forth a variety of challenges to the Board's procedures as embodied both in the Federal Register Notice establishing the Board and in the General Provisions dated March 1, 1976. Appellant has moved on a variety of procedural questions asking this Panel to afford it procedural rights not generally afforded to grantee appellants under either the Federal Register Notice or the General Provisions. As underpinning for most of these requests, Appellant asserts the applicability of the Administrative Procedures Act ("APA") to Board proceedings.

While the Panel wishes to address each of Appellant's major assertions, and does so in summary form below, the Panel is compelled to deny Appellant's procedural motions and does so herein. The Audit Hearing Board was established by the Commissioner of Education, and its members serve by appointment of the Commissioner. In accepting that appointment, individual Board members, including those serving on this Panel, accept the procedures set forth both in the Federal Register Notice and the General Provisions. As such, and if the Panel were sympathetic to Appellant's assertions, it would be without authority to reject our own procedures and impose substitutes for them. However, we need not reach the question of our own authority since this Panel finds the procedures challenged are reasonable ones.

1. *Applicability of the Administrative Procedures Act*

Appellant contends that a full evidentiary hearing in consonance with the provisions of the APA is required in this case. Appellant reaches this result by characterizing this proceeding a statutory adjudication. The Panel rejects this contention. The audit appeal process is not a de novo adjudication of statutory rights. It is rather a forum offered to grantees, and voluntarily accepted, for

reviewing the accuracy of audit exceptions given in the normal administration of a Federal grant program.

Nor is the Federal Register Notice establishing the Board or the promulgation of the General Provisions a "rule making" subject to the notice and comment requirement of the APA. Finally, since Appellant had actual notice of the General Provisions at the time it filed its application for review, the Panel can find no prejudice to Appellant by any failure to publish the General Provisions in the Federal Register.

The Federal Register Notice is clear in providing for a hearing process at variance with APA adjudications. The Panel is required to afford an opportunity for a hearing only with respect to cases involving a dispute of a material fact where resolution would be materially assisted by oral testimony; and where a hearing is provided, the Panel need only assure each party the limited procedural rights set forth in Section 7, subparagraphs (b) (2) (i), (ii), and (iii) of the Notice.

2. *Presentation of evidence and burden of proof*

Appellant would ask the Panel to place the burden of going forward and the burden of proof upon Respondent. Again, this is clearly at odds with the General Provisions of which Appellant had notice at the time it filed its appeal, and by which this Panel is bound.

Paragraph 12 of the General Provisions places the burden of proof and the initial burden of going forward with presentation of its direct case upon the grantee appellant. The Panel considers this to be a reasonable requirement since we must presume that final audit determination letters of the Deputy Commissioner represent something more than unsupported claims for refund. While the final audit determination letter may be the beginning of the Board's process, it is the conclusion of a rather lengthy audit process during the course of which Federal auditors make initial findings and State and local agencies

are afforded an opportunity to contest those findings. Issues raised and information submitted to the grantee are reviewed by the Deputy Commissioner before a final determination letter is issued. A good portion of that prior activity is reflected in the initial hearing record now before the Panel.

As a recipient of Title I funds, Appellant had an obligation to use those funds in accordance with assurances given when the funds were applied for and with provisions of the statute and regulations governing the grant when awarded. Federal auditors have found, after Appellant was afforded an opportunity to respond to initial audit findings, that the Commonwealth did not fully comply with relevant assurances and obligations. Only then is a final determination letter issued, and at that point Appellant becomes the moving party when it seeks a review of that final determination letter.

3. *Motions to compel discovery*

Appellant has also moved for orders compelling answers to interrogatories, production of documents, and the making available of certain witnesses for depositions. Again, the Board's General Provisions are clearly to the contrary. Paragraph 18 plainly establishes that the Federal Rules of Civil Procedure do not apply:

> "The panel does not have authority to issue subpoenas or order the production of evidence or discovery of witnesses by deposition or otherwise".

However, the Panel notes that the same Paragraph 18 goes on to provide:

> "However, the Office of Education will cooperate to the extent it has control over its own personnel or can arrange for such production or discovery from other divisions of the department or other agencies of the Federal Government".

The Panel interprets this language to be a good faith commitment on the part of the Office of Education to make reasonable responses to interrogatories and requests for production of documents, and to make reasonable efforts to identify appropriate audit personnel and make those personnel available for deposition by a grantee appellant. For these reasons, the Panel denies the motions for various orders, but urges Counsel for the Respondent to cooperate to the fullest extent practical in meeting the requests of opposing Counsel in fulfillment of that commitment.

Recovery Barred by the Statute of Limitations

The parties have agreed to the application of the statute of limitations, and we confirm our ruling of December 7, 1977 at which time we granted, without objection, Appellant's motion to dismiss $618,389.44 of the amount claimed in the final audit determination letter and find that amount barred by the statute. This leaves in dispute in this proceeding only $677,194.56 of the $1,295,584.00 originally claimed.

APPELLANT'S RIGHT TO A HEARING

Although not briefed or argued orally on December 7, 1977, an additional issue has been raised in subsequent communications. In its communication of January 9, 1978, Appellant asserts that if the Panel finds jurisdiction over this controversy, "it must order a full evidentiary hearing". Respondent suggests in its February 19, 1978 communication that the request for hearing may still be premature, alleging that Appellant has not identified the particular material facts at issue. Respondent cites Sections 5(a)(2) and 7(b)(2) of the Federal Register Notice. Respondent goes on to assert that it would be "inappropriate" for the Panel to order an evidentiary hearing until Appellant "clearly identifies what material facts are at issue".

The Panel concludes, after reviewing the voluminous materials already exchanged between the parties, that

Respondent's reading of the Board's Notice is too literal under the circumstances. The Panel finds that Appellant has raised a number of issues in the discovery stage and at the oral argument of December 7, which would justify the scheduling of a hearing in this case. The Panel would also call Respondent's attention to Page 2 of the "Joint Submission" of Counsel dated August 5, 1977, submitted to the Board under cover of August 25, 1977:

> "Counsel agreed that due to the extent of the factual disputes and complexity of the legal issues it is impossible to briefly summarize the issues involved."

It would not be fruitful to delay the scheduling of a hearing for the purpose of requiring Appellant to specify in writing those particular facts which it now considers to be in dispute.

Appellant is entitled to a hearing if it continues to desire one. Therefore, the Panel orders Counsel for Appellant to report back to the Panel within forty-five (45) days hereof with either:

1. A motion to withdraw its appeal;
2. A request to have the case decided upon the written record; or
3. A proposed schedule for hearing, arrived at after consultation with Respondent and the intervenors.

In the event Appellant chooses to go forward to a hearing, the Panel would expect both parties to advise us in advance of the hearing itself of the witnesses which each side proposes to call, and the general areas of controversy on which their direct case will focus. Obviously, the resolution of the matter can be facilitated if the parties can agree to stipulations of fact in advance of the hearing. We stop short of requiring them to do so only be-

cause of the time already consumed in unsuccessful discussions directed toward that end.

CHARLES E. HANSEN
OLCOTT D. SMITH
ROBERT J. SANER II, Chairman

/s/ Robert J. Saner II

May 9, 1978

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY
Washington, D.C. 20201

March 31, 1978

Office of the
General Counsel

Dr. David S. Pollen, Chairman
Title I Audit Hearing Board
U.S. Office of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Title I Audit Appeal of New Jersey
Docket No. 14-(29)-76
Audit Control No. 50006-02

Dear Dr. Pollen:

Enclosed is a joint "Pre-hearing Memorandum", together with the SEA's statement of factual and legal contentions and the Deputy Commissioner's statement of the issues presented and his position.

This letter clarifies that neither party requests a formal evidentiary hearing, at this time. We believe that all evidence on factual issues can be presented through briefs, documentary evidence and affidavits. However, both parties reserve the right to cross-examine affiants if their statements raise contested issues of fact.

This letter further clarifies that the parties jointly propose the following schedule:

(1) Within 45 days after the Panel issues its order regarding further proceedings the SEA shall file

its brief together with all supporting documentary evidence and affidavits.

(2) Within 45 days after receipt of the SEA's brief the Deputy Commissioner shall file its brief together with all supporting documentary evidence and affidavits.

(3) Within 20 days after receipt of the Deputy Commissioner's brief the SEA may file a reply brief.

The New Jersey SEA requests (and we do not oppose this request) that the Panel schedule oral argument at a convenient time following the exchange of briefs.

Mr. Mark Schorr, counsel for the SEA has been informed of and concurs with the clarifications in this letter.

Sincerely,

/s/ Robert J. Arnot
ROBERT J. ARNOT

/s/ Philip H. Rosenfelt
PHILIP H. ROSENFELT
Attorneys for the Deputy Commissioner
for the Bureau of Elementary and
Secondary Education

cc: Mr. Mark Schorr, Esq.

BEFORE TITLE I AUDIT HEARING BOARD
U.S. OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION
& WELFARE

Docket No. 14-(29)-76

APPEAL OF STATE OF NEW JERSEY
TITLE I, ESEA

PRE-HEARING MEMORANDUM

1. HEARING:

Neither party at this time requests a formal evidentiary hearing. In the event that no factual issues arise, the hearing in this matter will be confined to oral argument on the admissibility of documents and the legal issues raised.

In place of a formal evidentiary hearing, SEA will submit an affidavit from one of those who participated in the recalculations which it asserts now show eligibility of the schools declared ineligible by the audit. Counsel for the Deputy Commissioner will be provided with a copy of the affidavit in advance of the date set for argument and reserves the right to cross-examine the affiant if his statement raises contested issues of fact.

The Deputy Commissioner reserves the right to submit an affidavit of an auditor involved in this matter. Counsel for SEA will be provided with a copy of the affidavit in advance of the date set for hearing and reserves the right to cross-examine the affiant if his statement raises contested issues of fact.

2. EXHIBITS:

All other evidence to be offered at the hearing will be documentary in form. The respective parties will confer prior to hearing in order to mark in evidence by consent as many exhibits as possible. Exhibits offered by each party will be appended to its brief.

3. BRIEFS:

SEA's brief will be filed 45 days after the Panel issues its order regarding the hearing in this matter. The Deputy Commissioner's brief will be filed 45 days after receipt of SEA's brief. A reply brief, if one is deemed necessary, will be filed by SEA 20 days after receipt of the Deputy Commissioner's brief. All briefs will be served by certified mail, return receipt requested.

4. OTHER MATTERS AGREED UPON:

The parties have reached a tentative settlement regarding OE's claims for school year 1970-71. When a firm agreement is reached, a stipulation of settlement will be provided to the Panel for its approval.

5. FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES:

See attached memoranda.

/s/ Robert J. ARNOT
Attorney for the
Deputy Commssioner

/s/ Philip H. Rosenfelt
Attorney for the
Deputy Commissioner *
JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for New Jersey Department of Education

By: /s/ Mark Schorr
MARK SCHORR
Deputy Attorney General

* See our attached letter of March 31, 1978 for clarification.

Statement of the Issues Presented and the Deputy Commissioner's Position

1. Whether $91,266 in Title I funds were improperly expended at the Lafayette Street School (which was shown on the Newark LEA's 1970-71 Title I project application as having a low-income percentage below the district-wide average) during the 1970-71 project year?

It is the Deputy Commissioner's position that the Lafayette Street School was, as shown in Newark's 1970-71 project application, an ineligible attendance area and that $91,266 in Title I funds were improperly expended at the Lafayette Street School during the 1970-71 project year. The amount of funds which are recoverable has been substantially reduced by the statute of limitations and the parties have reached a tentative settlement of the Lafayette Street School audit determination.

2. Whether $41,021 in Title I funds were improperly expended at ten Newark schools (which were not listed on the Newark LEAs 1970-71 Title I project application as having low-income percentages below the district-wide average) during the 1970-71 project year?

It is the Deputy Commissioner's position that $41,021 in Title I funds were improperly expended at ten Newark schools during the 1970-71 project year. These ten schools were not listed on the Newark LEA's 1970-71 Title I project application as having low-income percentages below the district-wide average. The amount of funds that are recoverable has been substantially reduced by the statute of limitations and the parties have reached a tentative settlement of the audit determination concerning these ten Newark schools for 1970-71.

3. Whether the Newark LEA's method of computing the low-income percentages, listed in Newark's 1971-72 Title I project application, for school attendance areas complied with the Title I statute and regulations?

It is the Deputy Commissioner's position that Newark's method of computing the low-income percentages clearly violated Title I requirements, in particular the method set forth in 45 CFR 116.17(d) for determining the eligibility of attendance areas. The method used by Newark had basic mathematical flaws which inflated the low-income percentages for individual school attendance areas and thus improperly increased the number of eligible attendance areas.

4. Whether $1,029,630 in Title I funds were improperly expended during the 1971-72 project year at 13 Newark schools which the Newark LEA had incorrectly classified as eligible to receive Title I funds?

It is the position of the Deputy Commissioner that $1,029,630 in Title I funds were improperly expended at 13 ineligible schools during the 1971-72 project year.

5. Whether the recalculation of low-income percentages contained in Mr. Joseph Moore's May 7, 1976 letter to Dr. Richard Fairley (or any other after-the-fact eligibility recalculation) is relevant to this appeal?

It is the Deputy Commissioner's position that the New Jersey SEA, in approving the Newark LEA's 1971-72 Title I project application, violated its assurance to the U.S. Commissioner of Education that it would approve only applications which were in compliance with the Title I statute and regulations. The Newark LEA's 1971-72 application contained computations of eligibility that violated basic Title I requirements. Subsequent eligibility recalculations are not relevant.

6. Assuming *arguendo* that the May 7, 1976 recalculation (or any other after-the-fact eligibilty recalculation) is relevant, does such recalculation comply with the Title I statute and regulation?

As stated in the Deputy Commissioner's June 11, 1976 Final Determination Letter, the May 7, 1976 recalcula-

tion violates Title I requirements and (like the method used in computing the percentages in the 1971-72 project application) improperly inflates the low-income percentages for individual school attendance areas and thus improperly increases the number of eligible attendance areas.

/s/ Philip H. Rosenfelt
PHILIP H. ROSENFELT

/s/ Robert J. Arnot
ROBERT J. ARNOT

Attorneys for the Deputy Commissioner
for the Bureau of Elementary and
Secondary Education

March 31, 1978

SEA'S FACTUAL AND LEGAL CONTENTIONS

1. HEW is without authority to recover Title I monies already expended at the local level. Its sole remedy is prospective and is prescribed by statute witholding of future funds.

2. For the years in question in the instant action, the Newark program in general met the requirements of Title I. In approving the district's applications, SEA properly considered AFDC data and further recognized indices of poverty. The failure of the auditors and the Deputy Commissioner to recognize such reliance militates toward the conclusion that their findings were unjustified.

3. The propriety of SEA's action was also demonstrated, if not by the Newark application, then by recalculations done subsequent to the audit. They showed that the expenditure in schools alleged to be ineligible were in fact proper and in conformance with the applicable Title I regulations. If such recalculations are not considered; the result would be unduly punitive, and those penalized would be precisely the individuals Title I of the Elementary and Secondary Education Act was designed to benefit—disadvantaged children.

4. In the alternative, under any view of the applicable regulations, the whole of the school district could have been considered a Title I project area.

BEFORE TITLE I AUDIT HEARING BOARD
U.S. OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION
& WELFARE

Docket No. 14-(29)-76

APPEAL OF STATE OF NEW JERSEY
TITLE I, ESEA

AFFIDAVIT OF BERNARD J. BRANDWENE

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for New Jersey Department
of Education
State House Annex
Trenton, New Jersey 08625

MARK SCHORR
Deputy Attorney General
Of Counsel and
On the Brief

STATE OF NEW JERSEY)
) ss.
COUNTY OF MERCER)

I, BERNARD J. BRANDWENE, of full age, being duly sworn according to law, upon my oath depose and say:

1. I am currently in the employ of the New Jersey Department of Education. My title is Accountant I. Among my current responsibilities is fiscal program management of ESEA Title I to sub-grantees.

2. I am submitting this affidavit in connection with the appeal of the State of New Jersey, Department of Education, the above-captioned matter.

3. In November 1975, a meeting was held in the office of Mr. Frank Esposito, Federal Programs Director for Newark. I was among those who attended. The others were Frank Esposito, Rudy Jacob, Bob Darden, Sanford Gottlieb and Mel Marech, all of whom were employed in the Newark Federal Programs Office. Also in attendance were Jerome Jones, Ira Helfgott, Bill Franssen, and John Calcerano, all of whom were, as was I, in the employ of the New Jersey State Department of Education.

4. The aforementioned meeting was held to review the material and data involved in an audit exception of $1,029,630 contained in the Report of Audit of Title I of the Elementary and Secondary Education Act of 1965, Audit Control No. 50006-02, which related to the selection of target areas for Newark, New Jersey for the period September 1, 1970 to August 31, 1973. Discussion was limited to Recommendation No. 1 on page 18 of the Report, which was to the effect that $1,167,917 should be returned to the United States Office of Education. It was alleged in the report that that sum was expanded on ineligible attendance areas for school years 1970-71 and 1971-72.

5. As a result of these discussions it was agreed that the source data utilized for total low-income children for

individual attendance areas were incomplete and did not reflect accurately the number of low-income children concentrated in the areas.

6. Although school attendance areas were defined, we determined that the Newark Board of Education's long-standing policy of open enrollment (which meant that some children in a particular area might be attending other schools throughout the city) indicated that a different method of calculating eligibility should have been used. In our estimation, the proper method was one described in Title I ESEA Program Guide #44, furnished to us by the Office of Education, Department of Health, Education and Welfare. Criterion 1.1 of that document, we believed, authorized us to use a system of ranking, and a ratio which considered all school children who resided in a particular attendance area and were enrolled in elementary, junior and senior high schools. A true copy of the relevant excerpts from Program Guide #44 are attached hereto as Exhibit A.

7. AFDC data were utilized in the ratio. The numerator was comprised of the total number of AFDC children from any attendance area enrolled in elementary, junior and senior high schools; the denominator was made up of the total number of children from the area enrolled in elementary, junior and senior high schools. The formula was set up as follows:

$$\frac{\text{"Total number AFDC children in elementary, junior and senior high schools}}{\text{Total students enrolled in elementary, junior and senior high schools."}} = \text{Ratio}$$

8. The actual calculations are shown in Exhibit B, attached hereto. Columns 1, 2, 3 and 5 of Exhibit B are the same figures relied upon by the auditors on page 12 of their aforementioned report. Column 6 is the formula used to determine the number of students from a particular school enrolled in junior and senior high schools. The product of the two numbers in column 6 yielded the

number of students from a particular attendance area in junior and senior high schools. To make an example, according to Newark's statistics, 34.1 percent of the total junior and senior high school populations of schools fed by the Madison School (2389) come from the Madison school's attendance area. The product of those two figures thus demonstrates the number of students from the Madison attendance area enrolled in junior and senior high schools, or 815 (column 7). Adding that total to the total elementary enrollment column's yielded the number of students of all elementary and secondary grades from the Madison attendance area. The number represents the numerator in the above formula.

9. I have also provided data which demonstrates the extraordinary effort exerted by the taxpayers of Newark on account of Newark's meager tax base. Newark is at present, as it was in school year 1971-72, among the most overburdened municipalities in New Jersey. These data are attached hereto as Exhibit C.

/s/ Bernard J. Brandwene
BERNARD J. BRANDWENE

Sworn and subscribed to
before me this 30th day
of May, 1978.

EXHIBIT S-V

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT
NEWARK, NEW JERSEY

FEDERAL ASSISTANCE PROGRAMS
P.L. 89-10 ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

TITLE I
APPLICATION FOR
FISCAL YEAR 1971-1972

FRANKLYN TITUS
SUPERINTENDENT OF SCHOOLS

SELECTION OF ATTENDANCE AREAS FOR TITLE I PROJECTS

The attendance areas selected for Title I projects are those areas which, on the basis of the best available information have high concentrations of children from low-income families.

Eligible schools have been listed in order of highest concentration. The criterion used in qualifying schools was based on statistics on Aid for Dependent Children supplied by the Essex County Welfare Board.

Before selecting this method for qualifying attendance areas and schools within those attendance areas the following data were also examined:

- Housing statistics supplied by Applied Urbanetics
- Model Cities Statistics (Entire City of Newark is now a Model Neighborhood)
- Free lunch and free breakfast statistics (32,865 served daily)
- High percentage of Puerto Rican children
- High incident of foreign born and non-English speaking children
- Health Statistics
- Unemployment and Underemployed statistics

It should be noted that in comparing the statistics and projections compiled by Applied Urbanetics and the A.D.C. statistics provided by the Essex County Welfare Board, that each complements (possibly validates) the other.

	Applied Urbanetics	ADC Statistics
Children from low-income families 5-17	33,011	32,352
District Wide Percentage	32.6%	33.9%

The district-wide percentage was determined to be 33.9% of children 5-17 from low-income families. Located in eligible attendance areas are forty-two (42) public elementary schools, fourteen (14) non-public elementary schools, five (5) public junior high schools, six (6) public senior high schools and twelve (12) special education schools. Cleveland Elementary school will not participate in the E.S.E.A. Title I Program because it is endowed by the Chubb Foundation and the project is known as the "Victoria Plan". West Kinney Junior High school will not participate in the E.S.E.A. Title I Program because it receives supplementary funds from the Newark Board of Education and is known as the "Newark Plan".

Thirteenth Avenue school is a new school which will open in September, 1971 and draw its pupils from the Fourteenth Avenue, Fifteenth Avenue, Newton Street and South 8th Street School attendance areas. The percentage of children from low-income families is the average of the percentages of the four eligible attendance areas.

Based on an initial allocation of $7,202,529, it was determined that 23,900 children would participate in the program and receive at least $300 in Title I services and resources as mandated by state guidelines.

The average percentage of 35.7% was applied to the enrollment of each of the eligible public elementary, non-public elementary and special education schools in order to allocate on an equitable basis the number of Title I participating children in each of these schools.

The selected eligible secondary schools show the average percentage of low-income of all of the eligible elementary schools which feed into each of the secondary schools. The selected eligible secondary schools were assigned participating children on the basis of those children previously identified and who received Title I services in these schools in FY 1969, FY 1970, and follow-up services for new entrants who had been identified as Title I par-

ticipants in the feeding public elementary, non-public elementary and special education schools in FY 1970-1971.

Special Education schools are classified by handicap and therefore draw children from all attendance areas in the city. Participating children were allocated at the same percentage as other schools—35.7% of the enrollment.

Finally, the 23,900 participating children were distributed in the selected schools in eligible attendance areas as follows:

41	Public Elementary	16,639
6	Public Senior High	3,433
4	Public Junior High	1,407
14	Non-public Elementary	1,572
12	Public Special Education	849
	TOTAL	23,900

14. List objective data in priority order that was used to validate the identified needs of the educationally deprived children in eligible attendance areas (include both public and non-public school children who reside in the area).

A. THE BASIS

In attempting to determine the basis for priorities, each Title I school developed an on-going process of total involvement. Operating under the leadership of the Project Coordinator and with the approval of the principal, each Local Parent Council, project remedial/developmental teachers, student representatives at the secondary level, and a cross section of the school community defined pupil needs and established priority levels.

Based on the data and information gathered by this assessment group priorities were developed. The emphasis was placed on obtaining optimum academic achievement by each of the participating pupils. This needs assessment procedure carried on in each of the participating schools was directed towards a maximum

involvement of parents of the students for whom the Title I resources are intended.

There has been continuous liaison between the Administrator of the Title I Program and the Office of the Superintendent of Schools, of the Archdiocese of Newark. The Assistant Superintendent of Schools of the Archdiocese is a permanent member of the Central Parent Council.

The same criteria and the same involvement of staff and parents were used in assessing the educational needs of children in the non-public schools as were used in the public schools. Therefore, the needs assessment conducted for the elementary public schools applies to the non-public elementary schools.

Prior to any final decision on priorities, the local schools examined the results of the city-wide testing program administered in October, 1970. Newark's Director of Reference and Research released the following information:

"City-wide test results indicate that most Newark pupils are below the national norm in reading and in arithmetic. An examination of school medians and score ranges at the third, sixth, and seventh grade levels indicates that below-norm scores are generally distributed and are not necessarily confined to any one area of the city.

GRADE 3 ANALYSIS OF TEST RESULTS

Approximately 6,100 pupils were tested in Grade 3. Results of the *Reading Comprehension* (*Sentence and Paragraph*) section of the Metropolitan Reading Test show:

In Grade 3, out of every 100 pupils

18 were at, or above the norm in Reading

82 were below norm.

Of the 82 below norm,

32 were less than 1 year below.

50 were 1 year or more below.

In the 51 elementary schools tests, the Reading Comprehension medians (middle score) indicated

2 schools were at, or above norm.

32 schools were less than 1 year below the norm.

17 schools were 1 year or more below the norm.

The age medians on a city-wide basis were:

7 years 10 months—Mental Age

89—Median IQ

In the 44 elementary schools tested in Grade 6, the Reading Comprehension medians (middle score) indicated

No schools had a median at or above the norm.

2 schools had a median less than 1 year below norm.

42 schools had a median 1 year or more below the norm.

An analysis on a city-wide basis of Chronological Age and Kuhlman-Anderson test results shows for Grade 6

11 years 7 months—Median Chronological Age

10 years 4 months—Median Mental Age

89—Median IQ

GRADE 6 ANALYSIS OF TEST RESULTS

Approximately 5,400 pupils were tested in Grade 6. Results on the *Reading Comprehension* (*Paragraph*

Meaning) section of the Metropolitan Reading Test show:

In Grade 6, of every 100 pupils

8 were at, or above norm.

92 were below the norm

of the 92 below norm,

10 were less than 1 year below.

82 were 1 year or more below.

In 44 elementary schools tested in Grade 6, the Reading Comprehension medians (middle score) indicated

No schools had a median at or above the norm.

2 schools had a median less than 1 year below the norm.

42 schools had a median 1 year or more below the norm.

11 years 7 months—Median Chronological Age

10 years 4 months—Median Mental Age

89—Median IQ

The educational criteria for eligibility for participation in Newark's Title I project are as follows:

a) Poor academic achievement

b) Lack of response to conventional classrom approaches

c) Inadequate performance in communicative skills

d) Socially unacceptable behavior

e) Indifference to responsibility

f) Deficiency in cultural background

g) Physical defects and poor health habits

h) Poor school attendance

The instruments used for determining eligibility for participation were as follows:

a) Test scores (city-wide testing program)

b) Title I standardized reading achievement tests

c) School surveys

d) Guidance records

e) School cumulative record cards

f) Title I cumulative record cards

g) Reading profiles

h) Reading inventories

i) Anecdotal records

j) Health records

k) Dental survey

The existing data on the extent and nature of the health, nutrition and learning problems of the children in the attendance area indicates the following:

In the entire country Newark is second only to Washington, D.C. in the percentage of black population (54.2%). Another 11% of the population is comprised of people from an Hispanic background. Over 11% of the labor force are presently unemployed. 35,000 people are employed either full time or part time at a rate of $3,000 per annum.

Over 30% of Newark's population is receiving some form of public assistance.

Almost 80% of the dwelling units in Newark are at least 40 years old. 30% of the city's housing supply, or about 41,000 units, are clearly substantard.

Newark leads nationally with the highest percentage of slum housing, the highest incidence of crime per 100,000 population, the highest population turnover, the second highest population density, a high rate of maternal mortality, the second highest birth rate, a high rate of veneral disease and the seventh highest confirmed number of narcotic addicts. At present the city faces imminent bankruptcy.

All of these factors contribute to a deleterious effect on the nature of the health, nutrition and learning problems of school children. The already overburdened school system, municipal and state agencies supplying only the most fragmented health services, are overwhelmed with the problem of providing the necessary quantity and quality of services to ameliorate the situation.

SUPREME COURT OF THE UNITED STATES

No. 81-2125

TERREL H. BELL, SECRETARY OF EDUCATION, PETITIONER

v.

NEW JERSEY AND PENNSYLVANIA

ORDER ALLOWING CERTIORARI

Filed October 4, 1982

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1982 383768 1194